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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-6033

SHARON ROE and DOROTHY POE, on behalf of themselves and others similarly situated,

Appellants,

v.

NICHOLAS NORTON, individually, as Commissioner of Welfare of the State of Connecticut, and on behalf of others similarly situated,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

BRIEF OF CHILDREN OF APPELLANTS

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BRIEF OF CHILDREN OF APPELLANTS

QUESTIONS PRESENTED

1) Conn. Gen. Stats. §52-440b requires each mother of an illegitimate child on welfare to make public disclosure of the name of the child's putative father and to prosecute the father in a paternity action, presuming irrebuttably that disclosure and prosecution serve the child's interest. Does the failure of the statute to

provide a hearing on this issue deprive the child of his right to family privacy and autonomy without due process of law?

2) Does Section 52-440b deprive those illegitimate children who are poor of the equal protection of the laws by providing that only a poor child is subject to compelled disclosure and prosecution of his father without regard to the impact of compulsion on the child?

STATUTES INVOLVED

Conn. Gen. Stats. §52-440b provides:

> Compelling disclosure of name of putative father and institution of action. (a) If the mother of any child born out of wedlock, or the mother of any child born to any married woman during marriage which child shall be found not to be issue of the marriage terminated by a divorce decree or by decree of any court of competent jurisdiction, fails or refuses to disclose the name of the putative father of such child under oath to the welfare commissioner, if such child is a recipient of public assistance, or to a selectman of a town in which such child resides, if such child is a recipient of general assistance, or otherwise to a guardian or a guardian ad litem of such child, such mother may be cited to appear before any judge of the circuit court and compelled to disclose the name of the putative father under oath and to institute an action to establish the paternity of said child.
>
> (b) Any woman who, having been cited to appear before a judge of the circuit court pursuant to subsection (a), fails to appear or fails to disclose or fails to prosecute a paternity action may be found to be in contempt of said court and may be fined not more than two hundred dollars or imprisoned not more than one year or both.

For the text of other relevant statutory provisions, see Appendix to this Brief (hereinafter Br. App.).

STATEMENT

This action was brought by two mothers of illegitimate children on welfare to challenge the constitutionality of a Connecticut statute that authorizes certain officials to bring contempt citations against mothers of illegitimate children, requiring the mothers 1) to disclose to a judge of the circuit court the name of the putative father of their child, and 2) to institute and prosecute a paternity action.

Paternity actions in Connecticut are a means by which a support obligation may be imposed on an unwed father. Conn. Gen. Stats. §52-435a. They are civil actions and either party may demand a jury trial on the issue of paternity. Conn. Gen. Stats. §§52-438, 52-442. In the event the defendant is found guilty of being the father, he is charged with the support and maintenance of the child during the child's minority, although he is not accorded any corresponding parental rights by statute. Conn. Gen. Stats. §§52-442, 45-43. The convicted putative father may be incarcerated for failure to comply with court support orders and "shall be kept at hard labor," and he is not relieved of his debt upon release from jail. Conn. Gen. Stats. §52-443.

A mother who refuses to make disclosure or prosecute a paternity action may under the statute be found in contempt of court and fined not more than two hundred dollars or incarcerated not more than one year or both.

The statute establishes different enforcement mechanisms for different classes of children. The Welfare Commissioner may bring citations to compel disclosure with respect to children receiving public assistance, Connecticut's program of Aid to Families With Dependent Children (AFDC); a town selectman with respect to children receiving general assistance; and the guardian or guardian ad litem of a child with respect to children who are not on welfare. The Welfare Commissioner has declared it his policy to bring citations against every mother whose child receives AFDC and who refuses to make disclosure to him. Stipulations of Counsel, Single Appendix (hereinafter App. 56); Deposition of Caroline Packard (App. 81). By contrast, a guardian or guardian ad litem other than the mother may be appointed for the child only when a court determines that the interests of the child require such an appointment, Conn. Gen. Stats. §§45-43, 45-54, and is bound by fiduciary obligations to the *child.*

Each of the two mothers who brought this action had been cited to appear in court pursuant to the statute. They brought the action against the Welfare Commissioner on their own behalf and on behalf of their minor children, alleging that the statute violated privacy and due process rights and deprived them of equal protection of the laws. (App. 5-9.) The action was brought pursuant to 42 U.S.C. §1983 and sought both declaratory and injunctive relief. *Ibid.* It also sought the convening of a three-judge court pursuant to 28 U.S.C. §2281.

At the same time, another similar action was pending in the District of Connecticut, and the two actions were

ordered consolidated. (App. 13.) Upon consolidation, and after denying an application for a preliminary injunction, *Doe v. Norton*, 356 F. Supp. 202 (D. Conn. 1973), the court below on its own motion appointed counsel to represent the children of plaintiffs in both cases, in order to assure representation of what it saw as divergent interests of mothers and their children. (App. 29); *Doe v. Norton*, 365 F. Supp. 65, 69 (D. Conn. 1973). The children participated in the District Court, and the court deemed them "not only proper, but necessary parties". *Ibid.* Likewise, the court designated the action a class action, but divided plaintiffs into two subclasses:

"1) those mothers receiving AFDC assistance who refuse to comply with Section 52-440b; and

2) the illegitimate children of those mothers." *Ibid.* Although the plaintiffs had originally brought their action against the Welfare Commissioner as a representative of the class of all persons empowered to enforce the statute, the District Court did not certify a class of defendants.

The plaintiffs produced evidence in the form of affidavits from women who were cited into court or threatened with citation. Many of these women used affidavits in order to be able to testify pseudonymously and preserve their privacy. They detailed the harm they feared from disclosure, for themselves and their children. Their evidence about their individual situations was reinforced by evidence the children produced from Albert Jay Solnit, M.D., a child psychiatrist and psychoanalyst who is director of the Yale Child Study Center and President of the American Academy of Child Psychiatry (App. 63), and Edward F. Zigler, Ph.D., a psychologist specializing in child psychology who is Professor of Psychology at Yale, as well as former director of the Office of Child Development in the Department of Health, Education and Welfare.

(App. 125). Both experts testified to the disruption of families and the danger to the children's well-being that their training and clinical experience led them to predict enforcement of the statute would bring. The children produced in addition depositions from welfare department officials detailing the functioning of the statute.

The defendant produced statistics showing the incidence of illegitimacy in Connecticut.

The three-judge court on September 7, 1973, denied the application for a permanent injunction and dismissed the complaint. The court held that the statute did not invade a protected right of privacy by authorizing compelled disclosure in court, and ruled that it did not intrude "into the home nor any participation in interpersonal decisions among its occupants . . ." *Doe v. Norton*, 365 F. Supp. at 77, and therefore did not impinge on any rights of privacy, 365 F. Supp. at 77-78. The court also rejected plaintiffs' equal protection claim based on unequal enforcement of the statute, finding any discrimination "rational" to advance the interest of the State in recouping expenditures made on behalf of children on welfare. 365 F. Supp. at 82. Finally, it found no conflict between the statute and the Social Security Act, 42 U.S.C. §401 *et. seq.* 365 F. Supp. at 70-73.

Judge Newman concurred in the result. He thought it "evident" that the statute involved constitutionally protected privacy rights of the mother but found the statute constitutional "on its face," "in the precise sense that not every application of the statute would achieve an unconstitutional result." 365 F. Supp. at 84. However, Judge Blumenfeld writing for the court had recognized that plaintiffs had objected to the statute "as applied to them." 365 F. Supp. at 69.

This appeal by the plaintiff mothers followed. The children, although not appealing from the judgment in *Roe v. Norton*, argued below that the statute was unconstitutional as applied to them and support the position of the appellants here, on the premise that the interests of the children demand that the judgment be reversed.

SUMMARY OF ARGUMENT

1. Section 52-440b authorizes the State to compel the mother of an illegitimate child to identify and prosecute the father of that child. It thereby invades the family privacy and autonomy of the child, as well as that of the mother. The invasion threatens the most vital aspect of the child's right to family privacy: the continuity of the family and its relationships. The child's relationship with his father may be terminated as a result of the litigation; his relationship with his mother may be impaired; the disclosure may leave him a "father" he has not seen and does not know and weaken developing bonds with an adoptive father or stepfather.

The State's interest in its purse is plainly not the type of interest which justifies infringing this important right of the child, particularly where the prospects for collecting significant sums from the unwed father are slim, and the risk of harm to the child is great.

Nor can the State's interest in the well-being of children justify the functioning of the statute. For while purporting to safeguard the financial and psychological interests of the child, the State requires disclosure even when it would in fact harm the child. The statute thereby establishes an irrebuttable presump-

tion, contrary to fact, that disclosure and prosecution of a paternity action is always in the interest of the child. By denying the child a hearing at which he may prove that disclosure or prosecution would in fact be harmful, the statute denies the child due process of law.

2. Section 52-440b establishes one enforcement mechanism for children who receive welfare and a different, less onerous, mechanism for other children. In the case of a child who receives welfare, the power to enforce the statute is given to the Welfare Commissioner, who in fact proceeds against all mothers who refuse to make disclosure, without considering whether the proceeding will serve the interests of the child in a particular case. In the case of other children, however, the power to enforce the statute is given only to a guardian or guardian ad litem for the child. A guardian is appointed only when a court is persuaded the appointment will serve the child's interests, and the guardian has a fiduciary obligation to act in the child's interest in deciding whether to compel disclosure and prosecution of the father. Thus the interests of a non-welfare child are considered at two stages while those of the welfare child are not considered at all.

This distinction amounts to a legislative classification based on wealth, affecting the child's interests and family privacy. The State offers no plausible justification for affording a hearing to some children and denying it to those who receive welfare. Consequently, this statute deprives those illegitimate children who receive welfare the equal protection of the laws.

ARGUMENT

I.

SECTION 52-440b INVADES THE RIGHT OF CHILDREN TO PRIVACY AND AUTONOMY IN FAMILY LIFE WITHOUT PROVIDING ANY DETERMINATION THAT THE INVASION IS JUSTIFIED, IN VIOLATION OF THE CHILDREN'S RIGHT TO DUE PROCESS OF LAW.

A. Section 52-440b invades the right of children to privacy and autonomy in family life, which is a fundamental part of the liberty protected by the Fourteenth Amendment.

The statute at issue in this case authorizes the State to compel the mother of an illegitimate child to do two things: 1) to disclose the identity of the child's father in circuit court, and 2) to institute and prosecute a paternity action against the father.[1]

The statute threatens important rights of the mother with respect to childrearing and sexual privacy.[2] But

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[1] The authority to compel disclosure is given to the Commissioner of Welfare in the case of a child receiving public assistance, which is Connecticut's program for administering the federal program of Aid to Families With Dependent Children (AFDC); to the town selectman in the case of a child receiving general assistance; and to the child's guardian or guardian ad litem in all other cases. This distinction has serious consequences discussed in Part II of this brief.

[2] Plainly, as Judge Newman explained below, the constitutionally protected privacy of family life includes the interest of a mother in resisting compelled disclosure and prosecution of the putative father of her illegitimate child:

> "It is certainly an important aspect of child rearing for a mother to decide whether to secure legally some actual or potential financial benefit for her child at the expense of

the child suffers an even more serious invasion of his right to family privacy when the State compels his mother to disclose his paternity and to prosecute his father. The State forcibly alters the child's relationship with his mother and his father, without regard to the risk that altering these family relationships will cause more harm to the child than good. In addition, the State exposes to public scrutiny intimate details of the child's family history, without regard to the resulting legacy of humiliation and shame that the child may be left to endure. Finally, the State subjects the child to knowledge of facts about his parents, without regard to the possibly damaging impact of that knowledge on his psychological well-being. This threefold assault on the child's fundamental right of privacy is not justified by any substantial state interest, and therefore deprives the child of liberty without due process of law.

It is now established that the right of privacy to which the Constitution extends "special safeguards," *United States v. Orito*, 413 U.S. 139, 142 (1973),

> "encompasses and protects the personal intimacies of the home, the family, marriage, motherhood, procreation, and child rearing. Cf. *Eisenstadt v. Baird*, 405 U.S. 438, 453-54 (1972); *id.*, at 460, 463-465 (White, J., concurring); *Stanley v. Georgia*, [394 U.S. 557], at 568 [1969]; *Loving v. Virginia*, 388 U.S. 1, 12 (1967); *Griswold v. Connecticut*, [381 U.S. 479], at 486 (1965);

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fracturing an amicable father-child relationship or even of harming the child by inflicting upon it distressing knowledge such as incestuous parentage. Decisions on such matters would plainly seem to enjoy no less constitutional protection than the decision whether to educate the child at a public or private school. *Cf. Pierce v. Society of Sisters*, 268 U.S. 510, 45 S.Ct. 571, 69 L. Ed. 1070 (1925)." *Doe v. Norton*, 365 F.Supp. 65, 85 (concurring opinion).

> *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944); *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942); *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925); *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923)." *Paris Adult Theatre I v. Slaton*, 413 U.S. 49, 65-66 (1973).

The concept of family privacy embodies the fundamental notion that childrearing is, absent extraordinary circumstances, the business of parents and not of the State. As the Court recently said in *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972):

> "The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition."

Children, as well as their parents, have a strong stake in the preservation of the autonomy of their family lives from state interference. The child's interest in having his parents rather than the State make the crucial decisions concerning his family life is entitled to fully as much constitutional protection as other aspects of the right of privacy.

It is established that "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone," *In re Gault*, 387 U.S. 1, 13 (1967), see *Tinker v. Des Moines School District*, 393 U.S. 503, 506-507 (1969), and that the protection of family life from state control is in large measure the right of the child as well as of his parent. *Levy v. Louisiana*, 391 U.S. 68, 71 (1968); *Prince v. Massachusetts*, 321 U.S. 158, 165-166 (1944); see *Keyes v. School District No. 1*, 413 U.S. 189, 247-248 (1973). (Powell, J., concurring in part and dissenting in part).

The Court has recently recognized both the importance of family relationships and the special

character of the child's interest in these relationships. In *Stanley v. Illinois*, 405 U.S. 645 (1972), the Court struck down a statute that abridged, without a hearing, the fundamental interest of a father in the care and custody of the illegitimate children he had "sired and raised," 405 U.S. at 651. In *Rothstein v. Lutheran Social Services*, 405 U.S. 1051 (1972), the Court remanded a case factually similar to *Stanley*

> "for further consideration in light of *Stanley v. Illinois, ante*, p. 645, and with due consideration for the completion of adoption proceedings and the fact that the child has apparently lived with the adoptive family for the intervening period of time." *Ibid.*

The Court recognized in *Rothstein* that the fundamental right of a father to care and custody of his natural child might be outweighed by his child's interest in membership in a different family. Family privacy and integrity, in short, is at least as much the right of a child as of his parent.

The reasons for extending special constitutional protections to family life apply as fully to children as to their parents. The special protection accorded family privacy stems in large measure from a recognition of the importance of the family to its members. The bonds between family members, especially between children and the parents who nurture them, have a strength to which the State must defer; courts and legislatures must recognize that, for example the rights to care, custody and the companionship of one's children are "far more precious [to parents] than property rights." *May v. Anderson*, 345 U.S. 528, 533 (1953). Moreover, in a society of families, the composition and conduct of one's own family affects every aspect of daily life and fundamentally shapes each person's life cycle. *See, e.g., Roe v. Wade*, 410 U.S. 113, 153 (1973); *Eisenstadt v. Baird*, 405 U.S. 438 (1972). As family life and family

relationships are vital to parents, so are they at least as vital to children, for whom the family is their entire universe.

As a theoretical matter, the autonomy of the family is a vital part of the freedom of association protected by the First Amendment, *Griswold v. Connecticut*, 381 U.S. 479 (1965), and the child has a vital stake in the continuity and autonomy of his family as a member of a "communit[y] . . . characterized by shared understandings and values." Tribe, "Forward: The Supreme Court, 1972 Term," 87 *Harv. L. Rev.* 1, 34 (1973). One principal reason for affording special protection to the family is that it serves as the primary agency for fostering important interests of the child. The Court has protected family autonomy against invasions which jeopardize the development of the child in matters of religion, *Wisconsin v. Yoder*, 406 U.S. 205 (1972), thought and expression, *Meyer v. Nebraska*, 262 U.S. 390 (1923), and individuality and autonomy as a person, *Pierce v. Society of Sisters*, 268 U.S. 510 (1925). Ordinarily, judicial protection of family autonomy is invoked in the service of these other interests. But in this case, the threat is to the continuity of the child's family itself, which is the foundation and prerequisite for all the other values protected by family autonomy. If the Constitution recognizes the fundamental role of the family in our society and in the advancement of important rights of the child, it must accord the child protection against State-sponsored dismemberment or disruption of his family.

The evidence in the record illustrates the kinds of disruption to which children's families are exposed when their mothers are subjected to state compulsion under Section 52-440b.

1. "A"[3] testified that she planned to marry the father of her illegitimate child. She testified further that

[3](App. 39). Appellants and other women who gave testimony in affidavit form used pseudonyms, which are indicated here by quotation marks.

her child's relationship with its father might be threatened if she were compelled to sue the father in a paternity action.[4] If "A" married the child's father, the child would be fully legitimated, a result a successful paternity action could not achieve. Conn. Gen. Stats. §45-274.

2. "Mary Brown," (App. 40) testified that she planned to marry a man who is not the father of her illegitimate child but who is acting as a father to the child and would be in a position to adopt the child after the marriage. For her to name the biological father and prosecute a paternity action would jeopardize the child's interest in being adopted and in avoiding the stigma of illegitimacy for the rest of its life. "Mary Brown" resists disclosure, therefore, in order to spare her child "the social opprobrium suffered by these hapless children. . . ." *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164, 176 (1972).

Both "A" and "Mary Brown" have protected whatever interest their children might have in establishing their paternity by obtaining written acknowledgments of paternity from the children's fathers.[5]

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[4] The Department of Health, Education and Welfare has observed that "A's" plight is not unusual:

> ". . . Legal action taken by the parent to meet the agency's conditions may result in additional strains in relationships within the home, or may unwisely force the permanent severance of relationships with the absent parent." Handbook of Public Assistance Administration, Part IV, at 3422.5(2).

See also, Bridges v. Secretary, CCH Unemployment Ins. Rep. ¶16,480, at 2499-463 (E.D.N.Y. 1971).

[5] Such an acknowledgment accompanied by the mother's acknowledgment has, when filed with the Circuit Court, the force of a final judgment of paternity. Conn. Gen. Stats. §52-442a. Since no action need be brought when paternity is established by acknowledgment, the three-year statute of limitations does not apply.

Many other children are harmed in equally profound ways by this type of state intrusion into family privacy. Two experts in the fields of child psychology and child psychiatry gave uncontradicted testimony concerning the likely consequences to children of Section 52-440b's invasion of the autonomy of the family.[6] Dr. Edward Zigler confirmed Judge Newman's apprehension of the danger of "distressing knowledge", 365 F. Supp. at 85, of paternity:

> "The child's self-image will also be severely damaged when he knows who his father is where this knowledge brings home the fact of the father's failure to live in the home. A young child will assume that his father is absent because the child is unworthy in some way or because his father hates him." (App. 127).

Dr. Zigler went on to analyze the harm caused a child by compulsion of his mother in this intimate area of family life:

> "Particularly in strained situations such as father absent homes, it is important to a child for his mother to feel free and confident in her relationship with the child. State compulsion and intrusion into one aspect of that relationship—the information the mother imparts about the father—may be expected to leave a mother less sure of

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[6] Albert Jay Solnit, M.D., is a child psychiatrist and psychoanalyst who is director of the Yale Child Study Center and President of the American Academy of Child Psychiatry, as well as past-President of the American Psychoanalytic Association. (App. 63). Edward F. Zigler, Ph.D., is a child psychologist who is Professor of Psychology and Chairman-designate of the Department of Psychology at Yale, as well as former director of the Office of Child Development in the Department of Health, Education and Welfare. (App. 125).

herself as a mother. She will feel less in control of her relationship with her child; and as a result the child will feel less secure and sure of himself and who he is. Because the State is making an important decision about family life the mother, and hence the child, will also to some extent shift responsibility for parenting from the mother to the State, an effect which increases a sense of dependency on the State in both mother and child." (App. 128).

The court below rejected the claim that the statute interferes with the right of privacy, on the ground that the right of privacy protects certain activities relating to marriage and procreation but it does not protect information about those activities. 365 F. Supp. at 73-77. On this view, information about private conduct is protected only by the Fifth Amendment privilege against self-incrimination, and by non-constitutional common law evidentiary privileges.

As Judge Newman's concurring opinion makes clear, however, the constitutional protection of private conduct may also require protection of information about that conduct. 365 F. Supp. at 84-85, citing *NAACP v. Alabama*, 357 U.S. 449 (1958); *Bates v. Little Rock*, 361 U.S. 516 (1960). See also *Merriken v. Cressman*, 365 F. Supp. 913 (E.D. Pa. 1973). Moreover, even if mere information were outside the protection of the right of privacy, that would not dispose of this case. For §52-440b authorizes the State to compel the mother of an illegitimate child not only to disclose the identity of the father, but also to institute a paternity action against him. The mother is compelled to be not only a witness but also a plaintiff. Indeed, the compulsion of this hostile act by the mother against the father is one of the most important aspects of the intrusion of this statute on the privacy, and stability, of the child's family life.

It is now established that "where certain 'fundamental rights' are involved . . . regulation limiting these rights may be justified only by a 'compelling state interest,' . . . and that legislative enactments must be narrowly drawn to express only the legitimate state interests at stake," *Roe v. Wade*, 410 U.S. 113, 155 (1973); and that the right to privacy is one of these 'fundamental rights.' *Ibid.* See also *Stanley v. Illinois*, 405 U.S. 645, 651 (1972); *Stanley v. Georgia*, 394 U.S. 557, 564 (1969); *Kovacs v. Cooper*, 336 U.S. 77, 95 (1949) (Frankfurter, J., concurring). It is necessary, therefore, to analyze the state interests advanced in support of the statute and the means by which the statute purports to advance those interests.

B. The State purports to justify its invasion of children's rights to privacy and autonomy in family life by means of insubstantial interests and an irrebuttable presumption, depriving the children of liberty without due process of law.

The State advanced two distinct interests in support of the statute: that of the State, and that of the children. According to the District Court,

> In the absence of any legislative history, the court inquired and was informed that the scope of this statute was intended not only to protect the state's coffers but also to establish the paternity of all illegitimate children so that they might enjoy the long term psychological and economic advantages to be gained thereby.

365 F. Supp. at 73n. 10. (Citation omitted).

State court application of Section 52-440b has focused almost exclusively on the statute's function as a recoupment device, and has recognized that "[t]he primary purpose of the statute is to protect the State's coffers." *Norton v. Larracuento* (Br. App. 47a). Likewise,

in *Welfare Commissioner v. A. Ar.* (Br. App. 27a. Initials are used to protect privacy.), the court observed,

> "The State is entitled to be reimbursed for the money they expended for the support of the child. . . . That is all the State is interested in, the reimbursement. . . . If nothing can be worked out [to repay the State], you're going to have to go to jail."

The history of Connecticut's efforts to extract the names of putative fathers from the mothers of illegitimate children on welfare shows the primacy of the fiscal purpose. That history is detailed by the District Court. 365 F. Supp. at 71-72. Connecticut made disclosure a requirement of eligibility for welfare, first for entire families and then only for their mothers. *Doe v. Shapiro*, 302 F. Supp. 761 (D. Conn. 1969), appeal dismissed, 396 U.S. 488, rehearing denied, 397 U.S. 970 (1970); *Doe v. Harder*, 310 F. Supp. 302 (D. Conn.), appeal dismissed, 399 U.S. 902 (1970). This enforcement device snugly fits a fiscal recoupment rationale but is plainly incompatible with a state claim to protect the interests of the children it proposes to deprive of subsistence. See *Doe v. Shapiro*, 302 F. Supp. at 766. We will turn, then, to this primary purpose, "the protection of the State's coffers."

1. The State's financial interests are too insubstantial to justify invasion of important constitutional rights of children.

The State's fiscal claim is simply put: fathers, including adjudicated fathers of illegitimate children, are obligated to support their children. The State supports illegitimate children who receive AFDC, and therefore it is entitled to reimbursement from the father for its expenditures on behalf of the dependent illegitimate child. This statute facilitates that reimbursement. But this

claim must be weighed against the claim of mothers and children to family privacy, and to freedom from disruption of family life.

The Court has in a long series of equal protection decisions rejected rationalizations that a particular state policy saved the State money as an adequate ground on which to uphold a statute which worked a hardship on a particular class of people or penalized exercise of a constitutional right. Thus in *Graham v. Richardson*, 403 U.S. 365 (1971), and *Shapiro v. Thompson*, 394 U.S. 618 (1969), very substantial economies were held inadequate to justify the discrimination against aliens and new residents, respectively. See also *Rivera v. Dunn*, 329 F. Supp. 554 (D. Conn. 1971), affirmed 404 U.S. 1054 (1972). In *Harper v. Virginia Board of Elections*, 383 U.S. 663 (1966), fiscal gains were held inadequate to withhold from the poor access to a right deemed "fundamental." So here the State seeks to protect its coffers by invading the rights of mothers and children to family privacy. As the State's fiscal claim does not justify invasion of the right to travel or to vote in state elections on an equal basis with those who can pay a poor tax, so it cannot justify deprivation of the fundamental right of privacy.

This point is particularly clear with respect to children, as distinct from mothers who resist disclosure. The children are not in a position to advance the State's fiscal interest by giving information, and they depend on the State for their subsistence through no choice of their own. As to them, the State has recognized and asserted below its paramount interest in protecting their well-being. See, *e.g.*, *Wyman v. James*, 400 U.S. 309 (1971). The State cannot simultaneously

claim a right to undermine that welfare in the interest of the State's coffers.

Moreover, the practical effect of Section 52-440b on the State's interest is so slight as to defy recognition as a justification for the statute. Disclosure of the father's identity is not likely to produce support payments in most cases. Very few fathers of welfare children have sufficient resources to provide support payments. And even those who can pay are likely to evade enforcement of new support obligations. In AFDC cases involving married fathers, only one-fifth of the fathers contributed support during 1971. U.S. Department of Health, Education and Welfare, Findings of the 1971 AFDC Study, Part III, DHEW Publication No. (SRS) 73-03759 (hereinafter AFDC Study), table 6. It is unlikely that in the case of unmarried fathers the State could match even this unimpressive collection record.

It appears, moreover, that in most cases the mother of an illegitimate child gives the welfare department the name of the child's putative father. Deposition of Joseph Mancini (App. 112). Those who refuse, as the affidavits submitted in the District Court show, frequently do so in part because of the unsavory, unstable or unreliable nature of the putative father (App. 37, 45-46, 51). These fathers may be expected to be the least likely subjects of successful support proceedings.

Realistically, then, the State has a weak claim of injury to its fiscal integrity. It would reap greater financial rewards by using its limited resources to collect support from absent husbands, rather than from absent illegitimate fathers. In fact, however, the State does not pursue absent husbands with the vigor reserved for unknown putative fathers. Mothers of legitimate children cannot be compelled by statute to institute a support action, while Section 52-440b compels prosecution of a paternity adjudication. Conn. Gen. Stats.

§52-442. The State therefore claims fiscal necessity with respect to a requirement it does not apply to mothers of legitimate children. This discrimination diminishes the plausibility of the State's fiscal claim, and suggests that the statute may be a penalty for giving birth to an illegitimate child as much as a financial measure. To the extent it is punitive, the punishment falls on the child at least as much as on his parents, and this Court has firmly and unmistakably forbidden vicarious punishment of illegitimates for the supposed sins of their parents. *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164, 175-176 (1972); see *New Jersey W.R.O. v. Cahill*, 411 U.S. 619 (1973).

Even were the State's fiscal claim sufficient in principle to justify intrusion into the rights of mothers and children, Section 52-440b fails the "least drastic means" test with respect to the State's fiscal claim. Compulsion is permitted by the statute and sought by the Commissioner in a variety of situations in which benefit to the State is unlikely or even impermissible while harm to the children and their mothers is quite likely. For example, as Judge Newman pointed out below, the statute permits compelled disclosure of the father's identity, even if the statute of limitations for a support action has run. 365 F. Supp. at 86. The statute permits compelled disclosure even if the mother can show that the putative father is in a category of men who virtually never provide support, such as prison or mental hospital inmates. See AFDC Study, table 16. In short, the statute permits invasion of fundamental privacy rights of children and their mothers in instances where the invasion will not even advance the state fiscal interest asserted to justify it. Viewed as a fiscal measure, therefore, the statute "needlessly, arbitrarily, [and] capriciously impinge[s] upon this vital area of . . . constitutional liberty . . ." *Cleveland Board of Education v. LaFleur*, ___ U.S. at ___, 94 S. Ct. at 796, and is unconstitutional.

If Section 52-440b is to be sustained, then, it must be on the basis of the secondary statutory purpose asserted below: the *parens patriae* interest of the State in the children subject to the statute.

2. The State's interest in the well-being of children cannot justify its invasion of children's rights.

The District Court accepted the State's contention that "[i]nstead of operating to the disadvantage of children born out of wedlock, the statute operates to their benefit." 365 F. Supp. at 79. Mothers who resist naming and prosecuting the putative fathers of their children, in this view, harm those children, while state compulsion secures "long term benefit . . . to the children by the early establishment of their paternity. . . ." 365 F. Supp. at 80. In fact, however, analysis of the potential benefits and harms to children from compulsory disclosure and prosecution shows that the interests of children vary with their individual circumstances. Most children are more likely to be harmed than helped by enforcement of the statute against their mothers.

a. The interests of the child are not served by the statute in many cases.

Financial Interests

Compulsory disclosure and prosecution of the father may conceivably produce financial benefits for the child in the form of present support payments or future benefits from insurance or other sources. In many cases, however, the likelihood that the child will in fact realize any net financial benefit from the proceeding is negligible.

The child will realize no present benefit from a successful paternity adjudication if his father cannot be compelled to make support payments, a situation which exists if the father is impecunious, eludes efforts to collect support,[7] or is not amenable to process[8] or successful prosecution. Indeed, even if support payments are forthcoming, the child will realize no financial benefits unless the father can be compelled to make support payments on his behalf which exceed the amount he and his mother receive in welfare benefits. This follows from the fact that the family welfare allotment will be reduced in precisely the amount of any support payments. See *Norton v. Larracuento*, Br. App. at 40a.

With respect to the various benefits that may be payable at some future time, such as Veterans' benefits, the child can ordinarily establish his rights by proving paternity at the time when payments fall due even if there has been no prior adjudication of paternity.[9] See

[7]The AFDC Study discloses that even among fathers whose whereabouts were known, lived in the same state as the mothers receiving AFDC, and were not institutionalized, two-thirds paid no monthly support whatever. AFDC Study, table 16.

[8]The whereabouts of 61.4% of all unmarried fathers of AFDC children are unknown and another 9.3% do not live in the same state as the mother. AFDC Study, table 4. While the number of fathers whose whereabouts were unknown would be somewhat reduced by the operation of Section 52-440b, it would remain very substantial; the number of married fathers whose whereabouts were unknown exceeded 50% for the sample period. *Ibid.*

[9]The Veterans' Administration Act, 38 U.S.C. §101(4)(C), provides that illegitimate children may recover benefits if they can show paternity by 1) a written acknowledgment of paternity, or 2) an adjudication of paternity, or 3) can "otherwise establish [paternity] to the satisfaction of the administrator." If no paternity action has been brought, the child still has an opportunity to prove paternity before the

Weber v. Aetna Casualty & Surety Co., 406 U.S. 164 (1972). In this way his financial interests are protected and the harmful and disruptive effects of a Section 52-440b proceeding may be avoided or at least deferred.[10]

administrator. A child whose mother has an acknowledgment does not need a §52-440b proceeding to get Veterans' benefits.

Some benefit programs require a showing of "dependency" in order to recover benefits. See, *e.g.*, 33 U.S.C. §902(14) (Longshoremen's and Harbor Workers' Compensation Act); 46 U.S.C. §761 (Federal Death on the High Seas Act). Connecticut's Workmen's Compensation Act has such a provision, Conn. Gen. Stats. §§31-275, 31-306. Use of Section 52-440b does not determine eligibility for these programs. There can be dependency without an adjudication of paternity, *Piccinim v. Connecticut Light and Power Company*, 93 Conn. 423 (1919), and dependency is not established by the existence of an obligation to support; there must be actual support, *Ingalls Shipbuilding Corp. v. Neuman*, 322 F.Supp. 1229, 1241-45 (D.Miss. 1970); Conn. Gen. Stats. §31-275.

Where a statutory benefit is awarded in accordance with state intestacy laws, *e.g.*, *De Sylva v. Ballentine*, 351 U.S. 570 (1956) (Copyright Act, 17 U.S.C. §24); Conn. Gen. Stats. §45-280 (Wrongful Death), the Connecticut child would not be assisted by a paternity decree, as he would still be excluded from intestate succession to the father's estate. *Heath v. White*, 5 Conn. 228, 235 (1824); *Arcand v. Fleming*, 185 F.Supp. 22, 24 (D.Conn. 1960); see *Labine v. Vincent* 401 U.S. 532 (1971). If these exclusions give way in light of *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164 (1972), then Section 52-440b controls when the paternity determination is made, but will not provide an otherwise unavailable opportunity for it to be made; *Weber* struck down an exclusion of unacknowledged (and unadjudicated) dependent, illegitimate children from statutory benefits.

[10]With respect to one categorical benefit program—the Social Security Act, 42 U.S.C. §§401 *et seq.*—there is sometimes an advantage to bringing a paternity action. Some illegitimate children who cannot show a paternity adjudication in order to receive benefits will have to prove not only paternity but also that their father was "living with" them or "contributing to [their] support," 42 U.S.C. §416(h)(3), at the time made relevant by the statutory subsection applicable to the benefit in

Not only do Section 52-440b proceedings often fail to produce any real benefit to the child, but they may actually threaten financial interests in a variety of situations. First, litigation may interfere with a developing amicable relationship between the father and his family, a relationship which would serve the child's financial interest better than a support order.[11]

question. But the prejudice is only to a very slender category of children.

In order to be prejudiced under the statutory scheme, a child must 1) have a putative father who is insured under the Act and entitled to one of the categorical benefits; 2) have the disclosure required by Section 52-440b be followed by a paternity action, see footnote 8, *supra*; 3) have the paternity action be successful; 4) not have a timely written acknowledgment of paternity. The writing need not be formal, see *Madison v. Richardson*, 354 F.Supp. 383 (M.D. La. 1973); *cf. State v. Wolfe*, 156 Conn. 199 (1968); 5) not have been otherwise decreed by a court to be the child of the putative father, *cf. Hartford National Bank & Trust Co. v. Prince*, 28 Conn. Sup. 348 (Super. Court 1968); and 6) not be able to show the Secretary satisfactory proof of paternity together with evidence the child was living with or receiving support from his father at the relevant time.

The statutory definition of "living with or contributing to the support of" the child has been judicially interpreted extremely favorably to applicants, see *Madison v. Richardson, supra; Bridges v. Secretary*, CCH Unemployment Ins. Rep. ¶16,480 (E.D.N.Y. 1971); *Mobley v. Richardson*, CCH Unemployment Ins. Rep. ¶16,439 (W.D.N.C. 1971); *Wagner v. Finch*, 413 F.2d 267 (5th Cir. 1969); *Schmiedigen v. Celebrezze*, 245 F.Supp. 825 (D.D.C. 1965).

Indeed the Act's discrimination against unadjudicated illegitimate children may violate the Equal Protection Clause, see *Jimenez v. Weinberger*, ___ U.S. ___, 42 L.W. 4948 (June 19, 1974).

[11]A study of support payments from absent fathers shows that the greater the informality of a support agreement, the more likely it is that a father will make support payments and the larger those payments will be. S. Kaplan, *Support from Absent Fathers in Aid to Dependent Children, Social Security Bulletin,*

Second, a paternity suit pursuant Section 52-440b might be unsuccessful and in that case the rules of *res judicata* and collateral estoppel would preclude establishment of paternity at a more propitious time.[12] Third, there may be a potential adoptive father who would support the child, and disclosure or litigation might interfere with that alternative source of financial benefit to the child, see, *e.g.*, Affidavit of "Mary Brown." (App. 40.)

Finally, from the point of view of the child, the statute is self-defeating in any case where the mother is determined to resist disclosure. The mother may choose to be fined or imprisoned for contempt, or avoid the operation of the statute by removing her child from the welfare rolls, or she may testify falsely at the hearing. The latter two responses may well be quite common.[13] In such cases, the statute confers no financial benefit at

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Vol. 21, No. 2, Pages 3, 6, 9 (1958). The study concludes that the contribution rate of fathers contributing under court order is less than that of fathers voluntarily contributing because "[c]ourt proceedings may sometimes engender greater hostility between the parents of the children and impair any prospects that might have existed for a family reconciliation; in addition court costs must be paid." *Ibid.*, at 6. See also *Bridges v. Secretary*, CCH Unemp. Ins. Rep. ¶16480, at 2499-463 (E.D.N.Y. 1971).

[12] *Ruocco v. Logiocco*, 104 Conn. 585 (1926). The same adjudication could be used to bar recovery under federal statutes, see *Collins v. Celebrezze*, 250 F. Supp. 37 (S.D.N.Y. 1966); see also *In re Burrus*, 136 U.S. 586 (1890); *Harris v. Turner*, 329 F.2d 918 (6th Cir. 1964), cert. denied, 379 U.S. 907 (1964).

[13] For examples of removal of the child from the welfare rolls, see *Doe v. Norton*, 365 F. Supp. 65, 78 n.21 (D. Conn. 1973); *Welfare Commissioner v. A.A.*, Br. App. 7a; *Welfare Commissioner v. S.B.*, Br. App. 9a; *Welfare Commissioner v. R.C.*, Br. App. 11a. For examples of cases in which the court suspected untruthful testimony, see *Welfare Commissioner v. R.C.*, Br. App. 11a, at 14a-16a; *Welfare Commissioner v. M.B.*, Br. App. 18a.

all on the child, it may in fact harm him financially, and it may cause grave harm to other interests of the child as well.

In many cases, then, the child will realize no benefit from compulsory disclosure and prosecution of the father, and indeed in some cases the child may realize a financial loss.

The State asserts, however, that Section 52-440b offers children not only financial benefits, but important psychological benefits as well.

Psychological Interests

The State has asserted that compelled disclosure and prosecution of a paternity action benefits children psychologically by enabling them to know who their fathers are and by facilitating development of a father-child relationship. The State offered no evidence in support of this claim, and the record demonstrates that in many cases enforcement of the statute endangers paramount psychological interests of children and leaves them psychologically damaged casualties of the State's campaign against family privacy.

Embroiling the child's parents as adversaries in litigation of which he is the subject strains and may break developing bonds between the child and his father, either by disrupting the relationship between father and mother or by fostering paternal resentment of the child. Deposition of Albert Jay Solnit (App. 65-66, 68-70); Affidavit of Edward F. Zigler (App. 128); Affidavits of "A", "M," and "Sharon Roe" (App. 39, 42-43, 50-51); see *Doe v. Norton*, 365 F. Supp at 85 (concurring opinion).

Likewise the child's relationship with his mother is threatened when, on account of him, she is obligated to identify publicly the man with whom she has been sexually intimate, and to sue the father of her child.

The mother, already burdened with the difficult task of raising her illegitimate child without a husband and on the margin of financial subsistence, is placed under additional stress, which impairs her capacity to care for her child. Moreover, she may resent the child as the source of an onerous legal obligation or as the catalyst for the disruption litigation may have caused to her relationship with the child's putative father, see Affidavit of Edward Zigler (App. 128); Affidavits of "Rena Roe" (App. 37), and Mildred Walter (App. 41-42).

Finally, the child may be harmed by knowledge of his father's identity. Knowledge may interfere with a relationship between the child and a stepfather or adoptive father; or it may wound the child by underlining his absent father's shortcomings and rejection of the child, see *Doe v. Norton*, 365 F. Supp. at 85 (concurring opinion); Affidavit of Edward Zigler, (App. 126-127), Affidavits of "Mary Brown," (App. 40), "Frances Foe" (App. 45-46).

The State's claim of the effect of Section 52-440b, then, is shown by the record to be at odds with reality. It is also undercut by Connecticut's failure even to provide means for children to receive the benefits it asserts Section 52-440b will confer. The statute does not provide for disclosure of the name of the putative father *to the child*, for whom the statute will therefore lead to knowledge only via the humiliating route of public gossip. Nor has Connecticut conferred any parental rights on putative fathers. Conn. Gen. Stats. §45-43. The unwed father therefore has only such claims to enjoy a parental relationship with his child as may be recognized by the mother, or by the courts in light of *Stanley v. Illinois*, 405 U.S. 645 (1972). Neither of those claims depends upon a paternity adjudication under Section 52-440b.

b. Section 52-440b denies the child the opportunity to prove that his interests are not served, establishes an irrebuttable presumption contrary to fact, and thereby violates the child's right to due process of law.

Compulsory disclosure and prosecution under Section 52-440b may serve the financial and other interests of children in some cases and the financial interests of the State in some others. But in many more cases the proceeding serves no interest at all. By failing to provide for individualized determinations, the statute sweeps too broadly. It amounts to an irrebuttable presumption that the interests of the child are served (or at least not harmed) in every case, a presumption that applies even when the evidence as to a particular child might be wholly to the contrary.

Indeed, this presumption is not merely latent in the statutory scheme; it is reinforced by the policies of the Welfare Commissioner, the official empowered to demand disclosure and prosecute women under Section 52-440b. He demands that every woman on welfare make disclosure; he retains counsel for the purpose of prosecuting those who do not; and he only pays counsel who either elicit disclosure or bring a prosecution. See Stipulation No. 1 (App. 56); Deposition of Caroline Packard (App. 80-81, 90).[14]

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[14]Counsel for the Commissioner left no doubt at the hearing below that the statute, like the Commissioner's policy, rested in his view on a conclusive presumption. He was asked by the Court, "Are you saying that in every case the financial benefit to be derived from knowing the name of the father will always outweigh the factors such as emotional health, family stability, fear of violence and everything else that might cut against disclosure?" Transcript of Hearing at 50. The reply was unequivocal:

> "I think the rights of the children really demand that the action be brought in one hundred per cent of the cases, or

The court below suggested that the presumption was not in fact irrebuttable, that it might be open to the mother or child to persuade the circuit court to refuse to order disclosure in a particular case, on the ground that disclosure would not help, and might harm, the interests of the child. But the court below noted that the statute does not require the circuit court to consider the interests of the child, 365 F. Supp. at 74 n.14, and the State itself contends that the statute does not even permit litigation of that issue at the statutory hearing. Transcript of Hearing at 45.

Certainly the statutory procedures are designed to discourage consideration of the interests of the child. There is no provision for representation of the child in a Section 52-440b proceeding. When Connecticut recognizes that interests of the child warrant protection, it is generous in providing counsel. Children have counsel in every juvenile court proceeding which may affect their interests. Conn. Gen. Stats. §17-66b; Rules for the Juvenile Court, Connecticut Practice Book (1963), Section 1122 (effective July 1, 1974). Each minor whose rights "may be substantially affected in a proceeding before a court of probate" has a guardian ad litem appointed to represent those interests. Courts of Probate, Rules for Practice and Procedure, Rule 4, Connecticut Law Journal, April 30, 1974. In fact, appointment of a guardian ad litem is authorized by statute for any child who "may have an interest" in any proceeding in probate court, the court of common pleas, or superior court–*but not in a proceeding in circuit court*. Conn. Gen. Stats. §45-54. Connecticut has

substantially all the cases that you can reasonably do it in... I just think that the establishment of this status with the children outweighs any negative factors that are undoubtedly present in some of the cases." Transcript of Hearing at 51.

selected as the forum for Section 52-440b hearings, then, the only trial court in which children are *not* accorded the protections of counsel or a guardian ad litem.

Predictably, Circuit Court judges have not found consideration of the interests of children to be part of their task at Section 52-440b hearings. The fact that the State is supporting the child has invariably been regarded as a sufficient reason to compel disclosure and prosecution by the mother. See Br. App. 7a, *et seq.*

To summarize: The State has agreed that the interests of the child are not a proper subject of litigation at a Section 52-440b hearing; the District Court found that such consideration was not required by the statute; there is no provision in the statute for the interests of the child to be expressed or considered; and those interests have in fact not been considered or expressed as a possible limit on the State's recoupment power. In short, no consideration of the interest of children is provided in the statute.

The conclusive presumption embodied in Section 52-440b is not necessarily true; nor is it even true in most cases. Since it affects the important interest of family privacy, without allowing for an opportunity to test its validity in a particular case, the presumption, and with it the statute, must fall as violative of the Due Process clause of the Fourteenth Amendment.[15]

[15]It should be noted that while this brief argues that the State's financial interest is always insufficiently substantial to override the interest of the child in nondisclosure when disclosure would harm the child, it is not necessary to go so far to determine that Section 52-440b is unconstitutional. The analysis followed by Judge Newman in his concurring opinion leads to the same conclusion. Judge Newman saw the balance that needed to be struck as being between the privacy interests primarily of the mother and the State's interest in enforcing the support obligation, including its fiscal interest in recoupment. But, as Judge Newman points out, even giving that fiscal interest

In *Cleveland Board of Education v. LaFleur*, ___ U.S. ___, 94 S. Ct. 791 (1974), the Court found that the State's use of an irrebuttable presumption violated the constitutional maxims that intrusions into protected liberty must not "sweep too broadly, See *Shelton v. Tucker*, 364 U.S. 479 . . .," ___ U.S. at ___, 94 S. Ct. at 798, or "needlessly, arbitrarily, or capriciously impinge upon [a] vital area of . . . constitutional liberty." ___ U.S. at ___, 94 S. Ct. at 796. In *LaFleur*, the Court confronted a regulation that impinged on personal liberty in the important area of marriage and family life, as does the Connecticut statute at issue here. The regulation in *LaFleur* required teachers to stop working in their fifth or sixth month of pregnancy. The Court found that the statute could not be adequately justified by the State's interest in keeping physically unfit teachers out of the classroom, because "the ability of any particular pregnant woman to continue at work past any fixed time in her pregnancy is very much an individual matter." ___ U.S. at ___, 94 S. Ct. at 799. A fixed cut-off date therefore functioned as an irrebuttable presumption that all teachers were incapacitated by a certain time in pregnancy when many demonstrably were not. The presumption, said the Court, was impermissible and denied due process of law.

Similarly in *Stanley v. Illinois*, 405 U.S. 645 (1972), the Court evaluated a statute which affected personal

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enough weight to overcome the claim to family privacy in some instances does not conclude the inquiry. Mothers and children are still entitled to a determination of whether the State's interests, including its financial interest, in each particular case are sufficiently weighty to overcome their privacy interests.

Using Judge Newman's analysis does not alter the conclusion that the statute is unconstitutional. The principal vice of the statute is precisely that it provides no requirement or assurance that the competing interests be developed at a hearing or that establishment of the constitutional interests of mothers or children precede enforcement of the statute.

rights in the areas of marriage and family life. The statute in *Stanley* provided that "parents" were entitled to custody of their children absent a showing of neglect, and excluded illegitimate fathers from the definition of "parent." The court held that the exclusion could not be justified by the State's interest in protecting children from unfit parents, for that would amount to an irrebuttable presumption that illegitimate fathers are unfit: "[T]he State registers no gain toward its declared goals when it separates children from the custody of fit parents. Indeed, if Stanley is a fit father, the State spites its own articulated goals when it needlessly separates him from his family." 405 U.S. at 652-53. It concluded that the State's purpose could be served while protecting Stanley's interest "in the children he has sired and raised," 405 U.S. 651, by affording Stanley a hearing on the issue of fitness before he was deprived of the care and custody of his children. And in *Stanley* as in *LaFleur*, the Court determined that the other interests asserted by the State in support of its policy were simply too insubstantial to authorize otherwise unneccessary incursion into the liberty protected by the Fourteenth Amendment.

So in this case it is only the State's interest in the welfare of children which can justify intrusion into the liberty of those children and their mothers. But that interest is served only in some cases, and in others it is unaffected or even harmed. As in *LaFleur* and *Stanley*, the State's interest in the welfare of children could be fully protected by an individualized hearing at which the State, the mother, and the child could produce evidence on the issue of whether compelled disclosure, compelled prosecution or both would serve the interests of the child.

On occasion, some state interests have been found sufficient to justify an invasion of the right to family

privacy, but these have involved claims very different from those at issue here. In *Prince v. Massachusetts*, 321 U.S. 158 (1944), the Court upheld a state law limiting the hours and the nature of child labor, on the ground that such laws serve the State's interest in protecting children from the harmful effects of excessive labor on their physical and mental growth. No claim was made in that case that the State's interest would be served in some cases and not in others, and that a hearing should be held to determine which cases were appropriate for the application of the child labor laws. The challenge to the statute was based, rather, on the claim that even in a case where the State's interest might be served, the child should nevertheless be exempt on the ground of religious freedom.

Similarly in *Wyman v. James*, 400 U.S. 309 (1971), the Court upheld a statute authorizing a welfare caseworker to make periodic visits to the home of the client, on the ground that it served the State's interest in protecting the child and determining whether the welfare grant was used for the child's benefit. Once again, there was no claim that the State's interest would be served only in certain cases, and a hearing should be held to determine which ones. The claim was, rather, that even if the State's interest would in fact be served, the client should be immune to search in the absence of probable cause.

In this case, on the other hand, the children make no blanket claim of immunity from the operation of the statute. The claim is simply that the State's asserted justification for the statute exists in some cases, and in many others it does not. Rather than presuming that it exists in all cases, the State has an obligation under the Due Process Clause to provide a hearing at which the issue can be determined in each case.

The District Court attempted to distinguish irrebuttable presumptions of fact from what it termed a

legislative "value judgment about the responsibility—financial and perhaps moral—of all fathers." 365 F. Supp. at 74-75 n.14. But the "value judgment" of the statute is in fact more specific: that all fathers of illegitimate children on welfare ought to be identified and compelled to pay support irrespective of the consequences of disclosure or compulsion on the children and their mothers. If this judgment reflects in turn a legislative determination that fattening the State's coffers justifies harm to children and invasion of their fundamental rights to privacy, that determination is not constitutionally permissible. The State is not free to invade rights of children given special constitutional protection, nor to jeopardize the child's welfare, which is "paramount," *Wyman v. James*, 400 U.S. 309, 318 (1971), with such slim justification. See Section I(B)(1), pp. 18-22, *supra*.

If, on the other hand, the State's "value judgment" reflects a determination that the interests of children will be served by the statute, it clearly rests on a presumption of fact which is often not true.

In cases where the presumption is not true, the State's compelling interest in the welfare of children is not served. Indeed, the State then has an interest, equally compelling, in avoiding disclosure or prosecution of a paternity action. Restriction of the statute only to cases where compulsion serves the interest of the child advances the State's compelling interest.

In rejecting the claim that due process requires individualized determinations, the District Court relied principally on grounds of administrative impracticality: "To make matters turn upon *ad hoc* inquiries into the actual state of mind of particular women, thereby encumbering Mann Act trials with a collateral issue of the greatest subtlety, is hardly an acceptable solution." *Wyatt v. United States*, 362 U.S. 525, 530, 1960, quoted at 365 F. Supp. 74 n.14. But here the issue of the best interests of the child is not collateral: it is

central and fundamental to the purpose and working of the statute. What was at issue in *Wyatt* was the right of a witness to claim an evidentiary privilege in a criminal jury trail under a statute whose application was not challenged. Here the issue is the constitutional right of mothers and children to resist the application of the statute itself.

Cases rejecting legislative irrebuttable presumptions have all pointed to the availability—present or potential—of workable procedures for individualized determinations. *Cleveland Board of Education v. LaFleur*, ___ U.S. ___, 94 S. Ct. 791, 800 n.14 (1974), *United States Department of Agriculture v. Murry*, 413 U.S. 508, 517 n.2 (1973) (Stewart, J., concurring), 518 (Marshall, J., concurring); *Vlandis v. Kline*, 412 U.S. 441, 451-452 (1973); *Stanley v. Illinois* 405 U.S. 645, 657 n.9 (1972); *Bell v. Burson*, 402 U.S. 535, 542-543 (1971).

Here the mechanism for an individualized determination is readily available—it is the §52-440b proceeding itself. All that need be done is to require judges to consider the child's interests, and to provide representation for the child, so that his interests may be developed. The question of the best interests of the child is peculiarly susceptible to resolution on a case-by-case basis, rather than by a single legislative determination. In matters of child custody, and cases involving neglected, dependent, and delinquent children, Connecticut assigns determination of the best interests of the child to its courts for individualized consideration rather than attempting to establish those interests by legislative classification and presumption. See Conn. Gen. Stats. §§17-59, 17-62, 17-68; Public Act 73-373, §§15-19, 24, 26, 31, 37.

The right to a hearing when important interests are at stake is the most fundamental element of due process of law. *Stanley v. Illinois*, 405 U.S. 645, 657-658 (1972); *Bell v. Burson*, 402 U.S. 535, 539 (1971); *Goldberg v. Kelly*, 397 U.S. 254, 264 (1970). Connecticut has foreclosed a hearing on the vital issue of the best interests of the child while it seeks to rely on those interests to justify its intrusion into the most intimate aspects of family life. When private interests of this magnitude are involved, the State may not proceed by presumption. *Cleveland Board of Education v. LaFleur*, ___ U.S. ___, 94 S. Ct. 791, 799-800 (1974); *Stanley v. Illinois*, 405 U.S. 645, 656-657 (1972). Its failure to provide children a hearing deprives them of due process of law.

II.

SECTION 52-440b DISCRIMINATES AGAINST THOSE ILLEGITIMATE CHILDREN WHO ARE POOR BY PROVIDING THAT ONLY A POOR CHILD IS SUBJECT TO COMPELLED DISCLOSURE AND PROSECUTION OF HIS FATHER WITHOUT REGARD TO THE IMPACT OF COMPULSION ON THE CHILD.

Section 52-440b appears to authorize compelled disclosure of the paternity of all illegitimate children. But in its enforcement mechanism the statute makes a critical distinction between children receiving welfare and all other children. The result of this distinction is that a welfare child is subject to compelled disclosure without any determination of the child's best interests, while any other child can be subjected to compelled disclosure only after a court has made a preliminary determination of his best interests, and a guardian or guardian ad litem has concluded that the suit will in fact serve the child's interests. This distinction denies illegitimate children who are poor the equal protection of the laws.

The distinction arises in the following way. For children who are recipients of public assistance, the statute authorizes the state Welfare Commissioner to bring the suit to compel disclosure. Similarly, for children who receive general assistance, the statute authorizes the town selectman, who is the administrator of the general assistance program, to bring the suit. But for children who are not on welfare, the statute confers the authority to bring suit only on a guardian or guardian ad litem. This distinction has two important consequences.

First, under Connecticut law the mother herself is the guardian of an illegitimate child, unless a court finds that the child's interests require the appointment of a guardian or guardian ad litem. Conn. Gen. Stats. §§45-43, 45-54. Thus, in the case of a child who is not on welfare, no third party has the power to file suit against the mother to compel disclosure, unless a court has determined that the child's interest requires the appointment of a guardian for the purpose of deciding whether to file the suit. In the case of a welfare child, on the other hand, no judicial determination is necessary to authorize a third party to file suit to compel disclosure.

Second, if a guardian is appointed for the purpose of deciding whether or not to compel disclosure, the guardian is obligated to make that decision solely on the basis of the child's best interest. In the case of a welfare child, however, for whom the decision is made by the welfare commissioner or the town selectman, the decision-maker is authorized to consider not only the interest of the child but also the possible conflicting interest of the Town or the State in the financial contributions of the putative father. Indeed, the interest of the child may be not only secondary but irrelevant; the defendant interprets Section 52-440b to deprive him of discretion to decline to enforce a support

obligation. Thus department policy requires prosecution of every mother without regard to the best interests of her children. Stipulation 1 (App. 56); Deposition of Caroline Packard (App. 80-81, 90).

A welfare child, then, is denied the two assessments of his interest which would be made for any other child: first, a preliminary judicial determination, and then a determination by a guardian that his interest would be served by compelled disclosure.

In assessing a legislative discrimination under the Equal Protection Clause, it is necessary to consider the nature of the classification, the individual interest affected by the classification, and the state interest asserted to justify it. See *Memorial Hospital v. Maricopa County*, ___ U.S. ___, 94 S. Ct. 1076, 1080 (1974); *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164, 173 (1972); *Harper v. Virginia Board of Elections*, 383 U.S. 663, 668-70 (1966).

The nature of the classification is a discrimination based on poverty. Those illegitimate children who receive some form of welfare assistance are treated differently from those who do not. This Court has of course invalidated under the Equal Protection Clause a long line of distinctions based on poverty, see, *e.g.*, *Tate v. Short*, 401 U.S. 395 (1971); *Harper v. Virginia Board of Elections*, 383 U.S. 663 (1966); *Douglas v. California* 372 U.S. 353 (1963); *Griffin v. Illinois*, 351 U.S. 12 (1956), and has reiterated that classifications based on wealth are constitutionally disfavored. *McDonald v. Board of Election Commissioners*, 394 U.S. 802, 807 (1969); *Harper v. Virginia Board of Elections*, 383 U.S. at 668. The distinction drawn by Section 52-440b is even more clearly invidious than the distinctions struck down in *Tate*, *Harper*, *Douglas*, and *Griffin*. For in those cases the discrimination against the

poor was not explicitly made by statute; it simply resulted from the fact that the State failed to provide a benefit to the poor that was available for purchase by the rich. In this case, however, the State has explicitly established for the poor a set of rules different from and harsher than those for the rich. There can be no clearer instance of a discrimination based on poverty.

The interest affected by the classification in this case is plainly substantial: it is the child's interest in protecting his privacy, his psychological well-being, and the stability of his home from the possible adverse effects of compelled disclosure and litigation over his paternity and support. See pp. 9-17 *supra*. It might be argued that this interest of the child is not substantially affected at all, that it is protected by a "sound judicial discretion" in the trial court to refuse to order disclosure. The statute does not, however, direct the trial judge to exercise his discretion in favor of the interests of the child. Moreover, even if it did, the welfare child would still be disadvantaged by the absence of an advocate for his interests. For in the case of any other child, a guardian decides whether compelled disclosure serves the child's interests, and if he thinks not, there is no suit to compel disclosure. In the case of the welfare child, however, the suit proceeds, and while the judge may have discretion to apply his own view of the child's best interest, no guardian or other advocate for the child will urge this course upon him.

What plausible bases are there for this discrimination against the poor? It might be argued that for a poor child financial support from his father is necessarily more valuable than any psychological benefit obtained by avoiding disclosure or litigation; a child who is already adequately supported, on the other hand, can afford to sacrifice additional support for less tangible benefits. On that theory, then, there is no need for a

judgment about the best interests of a poor child, because it will always be in his best interest to seek support. That argument overlooks the fact, however, that support payments from the father provide no financial benefit to the child on welfare, unless the father can support the child at a level that exceeds the level of welfare support. It also overlooks the possibility that any marginal financial benefit to the child may be outweighed in the particular case by the risk of serious psychological harm to the child. This possibility is recognized by the statute in the case of the non-welfare child, for whom a judgment is made by a parent or guardian, taking all factors into account. The non-welfare child may have precisely the same financial needs as the welfare child—their level of support may in some cases be identical—and yet the statute provides that for the welfare child, the pursuit of additional financial support must always be paramount. The financial needs of the child fail to justify the State in disregarding the psychological needs of an illegitimate child on welfare, when the State recognizes those needs for all other illegitimate children.

It might alternatively be argued that the distinction is justified not by the interests of the children, but by the fiscal interests of the State. In the case of children on welfare, the State has an interest in finding the father and enforcing his support obligation, in order to recoup past state expenditures and avoid future ones. See Conn. Gen. Stats. §§17-83e, 17-324. But the State's interest in recoupment bears no rational relationship to the precise discrimination worked by Section 52-440b. For the statute provides that the interests of children on welfare shall be not only subordinated to the State's interests, but wholly denied expression. The court below suggested that there is room in the enforcement of the statute for courts to consider the interests of the children. But while all children ought to receive that consideration, the statute singles out welfare children

and denies them the means of presenting their interests to the court. If all children are equally entitled to have their interests considered, there can be no basis for denying one class of children the representation necessary for adequate expression of their interests. In resolving the conflict between the interests affected by disclosure, the weight of the State's financial interest is wholly unrelated to the question whether the child's interests should be adequately represented and expressed.

Moreover, on any view of the statute, the protection of the State's treasury is not a substantial enough state interest to justify a discrimination that affects important personal rights, and that is based on the disfavored ground of poverty. Whatever the legitimacy of considerations of economy in cases where legislative classifications affect less important interests, the State's interest as a potential creditor cannot justify a discrimination which deprives poor children of the fundamental right to have their family privacy invaded only after a consideration of the impact of that invasion on their well-being. See *Memorial Hospital v. Maricopa County*, ___ U.S. ___, 94 S. Ct. 1076 (1974); *Shapiro v. Thompson*, 394 U.S. 618 (1969).

CONCLUSION

For the reasons stated it is respectfully submitted that the judgment of the court below should be reversed.

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CERTIFICATION

This is to certify that a copy of the foregoing Brief was mailed First Class Mail, Postage Prepaid, by depositing same in a United States Mail Box on June 20, 1974, to each of the following:

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APPENDIX A

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Sec. 52-435a. Petition by mother or expectant mother. Continuance of case. Evidence. Proceedings to establish paternity of a child born or conceived out of lawful wedlock including one born to, or conceived by, a married woman but begotten by a man other than her husband, shall be instituted by a verified petition of the mother or expectant mother, with summons and order, filed in the circuit court for the circuit in which either she or the putative father resides. Upon the filing of such petition, said court or any judge assigned to said court shall cause a summons, signed by him or by the clerk or assistant clerk of said court, to be issued, requiring the putative father to appear in court at a time and place named therein to show cause, if any he has, why the prayer of such petition should not be granted. Such petition, summons and order shall be in a form approved by the judges of the circuit court. In the case of a child or expectant mother being supported wholly or in part by the state, service of such petition may be made by any investigator employed by the state welfare department. No such petition shall be brought after three years from the birth of such child, or after three years from cessation of contribution toward support of the child by the putative father, whichever is later; provided the provisions of section 52-590 shall be applicable to this section. If such putative father fails to appear in court at such time and place, the court may hear the petitioner and enter such judgment and order as the facts may warrant. Such court may order continuance of such hearing; and if such mother or expectant mother continues constant in her accusation, it shall be evidence that the respondent is the father of such child.

Sec. 52-435b. Testimony of mother. The mother of any child for whom adjudication of paternity is sought

in paternity proceedings shall not be excused from testifying because her evidence may tend to disgrace or incriminate her; nor shall she thereafter be prosecuted for any criminal act about which (1) she testifies in connection with such proceedings, or (2) she makes any statement prior to such proceedings with respect to the issue of paternity.

Sec. 52-435c. Testimony of putative father. The putative father of any child for whom adjudication of paternity is sought in paternity proceedings shall not be excused from testifying because his evidence may tend to disgrace or incriminate him; nor shall he thereafter be prosecuted for any criminal act about which (1) he testifies in connection with such proceedings or (2) he makes any statement prior to such proceedings with respect to the issue of paternity.

Sec. 52-439a. Withdrawal or settlement. No such petition shall be withdrawn except upon approval of a judge assigned to the circuit in which the petition was brought. Any agreement of settlement, before or after a petition has been brought, other than an agreement made under the provisions of section 52-442a, between the mother and putative father shall take effect only upon approval of the terms thereof by a judge of the circuit court assigned to the circuit in which the mother or the putative father resides and in the case of children supported by the state or the town, to the approval of the welfare commissioner or the attorney general. When so approved, such agreements shall be binding upon all persons executing them, whether such person is a minor or an adult.

Sec. 52-440a. Action by state or town. The state or any town interested in the support of a child born out of wedlock may, if the mother neglects to bring such petition, institute such proceedings against the person accused of begetting the child, and may take up and pursue any petition commenced by the mother for the maintenance of the child, if she fails to prosecute to final judgment. Such petition may be made by the welfare commissioner of the town welfare administrator on information or belief. The mother of the child may be subpoenaed for testimony on the hearing of the petition.

Sec. 52-442. Judgment and order of court. If the defendant is found guilty, the court shall order him to stand charged with the support and maintenance of such child, with the assistance of the mother if she is financially able, and to pay a certain sum weekly until the child attains the age of eighteen years; and the court shall ascertain the expense of lying-in and of support and maintenance of the child until the time of rendering judgment, and order him to pay the amount thereof to the complainant, or, if a town or the state has paid such expense, to the town or the state, as the case may be, and shall grant execution for the same and costs of suit taxed as in other civil actions, together with a reasonable attorney's fee; and may require him to become bound with sufficient surety to perform such orders for support and maintenance and the expense of lying-in and to indemnify the state of the town chargeable with the support of such child from any expense for its maintenance. If he fails to comply with any such order, the court may commit him to a community correctional center, there to remain until he complies therewith; but, if it appears that the mother does not apply the weekly allowance paid by him

toward the support of such child, and that such child is chargeable, or likely to become chargeable, to the town where it belongs, the court, on application, may discontinue such allowance to the mother, and may direct it to be paid to the selectmen of such town, for such support, and may issue execution in their favor for the same. The provisions of section 17-323a shall apply to this section. The clerk of the court which has rendered judgment for the payment of money for the maintenance of any child under the provisions of this section shall, within twenty-four hours after such judgment has been rendered, notify the selectmen of the town where the child belongs. Any order for the payment of support for any such child may at any time thereafter be set aside or altered by any court issuing such order. Failure of the defendant to obey any order for support made hereunder may be punished as for contempt of court and the costs of commitment of any person imprisoned therefor shall be paid by the state as in criminal cases.

Sec. 52-442a. Acknowledgment of paternity and agreement to support; judgment. (a) In lieu of or in conclusion of proceedings under section 52-435a, the written acknowledgment of paternity executed by the putative father of the child when accompanied by a written affirmation of paternity executed and sworn to by the mother of the child and filed with the circuit court for the circuit in which the mother of the child or the putative father resides shall have the same force and effect as a judgment of that court; and an agreement to support the child by payment of a weekly sum until the child attains the age of eighteen years, together with provision for reimbursement for lying-in expense, accrued maintenance and reasonable expense

of prosecution of the petition, when filed with, and approved by a judge of, said court, at any time, shall have the same force and effect, retroactively or prospectively in accordance with the terms of said agreement, as an order of support entered by that court, and shall be enforceable and subject to modification in the same manner as is provided by law for orders of the court in such cases. Payments under such agreement shall be made through the family relations division of the circuit court. Such written affirmations, acknowledgments and agreements to support shall be sworn to, and shall be binding on the person executing the same whether he is an adult or a minor. Such mother shall not be excused from making such affirmation on the ground that it may tend to disgrace or incriminate her; nor shall she thereafter be prosecuted for any criminal act involved in the conception of the child as to whose paternity she makes affirmation.

(b) At any time after the filing with the court of any acknowledgment of paternity, upon the application of any interested party, the court or any judge thereof shall cause a summons, signed by him or by the clerk or assistant clerk of said court, to be issued, requiring the putative father to appear in court at a time and place named therein, to show cause, if any he has, why the court should not enter judgment for support of the child by payment of a weekly sum until the child attains the age of eighteen years, together with provision for reimbursement for lying-in expense, accrued maintenance and reasonable expense of the action under this subsection on the acknowledgment of paternity previously filed with said court. The prior judgment as to paternity shall be res adjudicata as to that issue and shall not be reconsidered by the court. All such payments shall be made through the family relations division of the circuit court.

Sec. 52-442b. Filing of agreements. Disclosure. All agreements entered into under the provisions of sections 52-439a and 52-442a shall be filed by the clerk of the circuit court of the circuit in which they are entered, and no information concerning any such agreement, the parties thereto or the contents thereof may be disclosed other than to the state or a municipal welfare administrator except on order of a judge assigned to said circuit.

Sec. 52-442c. Enforcement of prior orders and agreements. The circuit court shall have jurisdiction to enforce and modify all paternity orders and paternity support agreements issued by or filed with the court of common pleas prior to or after October 1, 1963, and existing on July 1, 1965, and, on application to said circuit court for enforcement or modification and upon request by the clerk of said court to the clerk of the appropriate common pleas court, the common pleas court file shall be transferred to the circuit court and there docketed for all subsequent proceedings.

Sec. 52-443. Continued liability of person committed for failure to comply with order. No person committed to a community correctional center for failure to comply with an order of the court as provided in sections 52-435a, 52-440a and 52-442, or any of them, shall be entitled to any of the privileges allowed other prisoners on civil process, or to take the oath provided for poor debtors, within six months from the date of such commitment, but shall be kept at hard labor during such six months; and the mother of such child, the state or the town chargeable with its support

may, at any time after the liberation of such prisoner, or after his taking said oath, recover the sum or sums due from him in pursuance of such order of court.

Sec. 52-444. Support of defendant while imprisoned. The complainant shall not be required to pay or give security for the support of the defendant during his confinement in a community correctional center, nor shall such defendant be discharged from imprisonment by reason of payment or security not being made or given for his support, but the jailer shall furnish such support and may recover the cost of the same from such defendant, or, in case of his inability to pay such cost, from the town where he belongs; and, if he belongs to no town in this state, such cost shall be paid by the state.

Sec. 52-445. Wage execution. Executions in accordance with section 52-362 shall be available in paternity proceedings.

CASE I

A.A.

April 2, 1973, Middletown, Conn.

THE COURT: A.A., how old are you?

THE DEFENDANT: Twenty-five.

THE COURT: Is this lady willing to disclose the name of the father?

MR. MURPHY: Your Honor, as you probably know there is currently pending in the Federal Court an action on Section 52-440b. In fact, today is the date of

the hearing on the matter. I would respectfully ask this Court to continue this matter pending the outcome of the case.

THE COURT: Is this the United States Court in Hartford?

MR. MURPHY: Yes, it is, and the issue of this case. . . .

THE COURT: The only trouble is that their decision may not be binding on this court. I will continue it for a week or a short stay. I'll give you a short stay because we are not going to wait until that case goes to the Supreme Court of the United States. There are various district courts and may differ throughout the country on your decision. I found that on the Court of Appeals. They are not binding on my court unless I agree with it.

MR. MURPHY: I don't believe the State of Connecticut is going to be adversely effected by the continuance. The child is only eighteen months old and there is exactly a year and a half to one on the statute, the limitation to a paternity action. Your Honor, I would ask at least one month.

THE COURT: I will give you a month. But if that decision is unduly delayed, as I have said before, unless I agree with the decision it is not binding on me because it is a trial court level collection. What particular date?

THE CLERK: May 1st.

(Whereupon, the matter was continued to May 1st, 1973.)

A.A.

May 7, 1973, Middletown, Conn.

MR. CARTA: A.A., your Honor, that may go off. That person is no longer receiving state aid.

THE COURT: May go off.

(Whereupon, the matter was concluded.)

CASE II

S.B.

April 2, 1973, Middletown, Conn.

MR. CARTA: Are you willing to disclose the name of the father?

THE DEFENDANT: No.

THE COURT: You are not?

THE DEFENDANT: No.

THE COURT: All right, take the witness stand. . . .S.B., . . . New Britain, Connecticut, being duly sworn by the clerk, testified as follows:

BY MR. CARTA:

Q. Miss B, are you the mother of a child born on January 21, 1973? A. January 12.

Q. 1973? A. 1971.

BY THE COURT:

Q. S.B. A. Right.

Q. When was he born? A. January 12, 1971.

BY MR. CARTA:

Q. Have you had a child born this year, January of this year? A. No.

Q. That's your only child? A. Yes.

Q. Now, Miss B, have you been on public assistance from the State of Connecticut? A. Yes.

Q. Are you presently on public assistance? A. I was supposed to get a check on the first of the month and I didn't because I'm working.

Q. When did you start working? A. Last Thursday.

Q. Have you been on public assistance in the past? A. Yes.

Q. Now, have you been as a result of the birth to you of this boy? A. Yes.

Q. Now, you reside at . . . , New Britain? A. Yes.

Q. That is still your present address? A. Yes.

Q. Have you been questioned by the Welfare Department in New Britain concerning the father of the child? A. Yes.

Q. Will you tell his Honor the identity of the father of the child? A. No.

BY THE COURT:

Q. You will not? A. No.

Q. Do you know what the statute says? Anyone who refuses to disclose the name of the father could be held in contempt of court and could be fined not more than $200 and imprisoned not more than one year or both. Do you understand that? A. Yes.

Q. And you still refuse? A. Yes.

Q. And the child is presently a recipient of the State Welfare? A. No.

Q. You didn't get one the first of this month. Was it ever terminated? Did you get the last check? A. No. You know I'm working. They found me a job and I was supposed to have the check on the thirty-first.

Q. Do I understand now that you are working this child is going off welfare? A. Yes.

THE COURT: Well, why don't you check that matter out, check whether this child is a recipient now. The statute says at the present is a recipient. You ought to amend your petition.

MR. CARTA: I think at the time I received notice—you just began working?

THE DEFENDANT: Yes.

THE COURT: Continue this also to May first. Check that because she would have a right to refuse even if the statute is constitutional if the child is not presently a recipient.

(Whereupon, the matter was continued to May 1, 1973.)

CASE III

R.C.

October 2, 1973, Middletown, Conn.

Before: The Honorable Eli L. Cramer, Judge.

R.C., Meriden, Connecticut, being duly sworn by the clerk, testified as follows:

THE COURT: Do you have counsel, Miss C?

THE DEFENDANT: No, I haven't.

THE COURT: Do you want counsel?

THE DEFENDANT: No, I don't believe it's necessary.

THE COURT: You don't feel it's necessary?

THE DEFENDANT: No.

THE COURT: And you wish to appear at this time on your own behalf without counsel?

THE DEFENDANT: Right.

THE COURT: And you don't wish counsel appointed for you?

THE DEFENDANT: No.

THE COURT: All right. Do you wish to consult with a lawyer? There is a lawyer present and I can ask him to give you advice.

THE DEFENDANT: I don't believe it is necessary.

THE COURT: You don't wish a lawyer to act as a friend of the court and this gentleman is here and is very familiar with the subject if you want to discuss it for a moment. Do you want to take a few moments to discuss it?

MR. CARTA: I think that would be a good idea. I discussed this matter with this lady.

THE COURT: This gentleman is a lawyer who is familiar with statutes, familiar with their implications. Your name, for the record.

MR. MILLER: Donald Miller, your Honor.

THE COURT: And a member of the Middletown Bar is going to discuss this matter with you. You are not being appointed but merely as amicus curiae in this case. We will take a few minutes.

(At 2:45 o'clock a ten minute recess was taken.)

AFTER RECESS

THE CLERK: Miss C, do you want to step down here please?

THE COURT: She has been sworn?

THE CLERK: Yes, she has been sworn, your Honor.

BY MR. CARTA:

Q. Miss C is your present address .... A. My name is Mrs. C.

Q. I beg your pardon. Is your present address ... Meriden? A. Yes, it is.

Q. Are you presently on State aid? A. I receive $106.89 a month from the State.

Q. Mrs. C, on or about November 1, 1971, did you give birth to a daughter? A. On November the first, 1971, yes.

Q. Mrs. C, are you able to day to identify or are you willing and able today to identify the father of your daughter? A. I would be willing if I knew. But I don't know so I can't.

Q. Is it your testimony therefore that you do not know? A. I do not know the name of my child's father.

Q. Mrs. C the birth date of Jennifer was November 1, 1971. Is that correct? A. Yes.

Q. That would place the date of conception somewhere around January of 1970? A. Yes, January.

Q. It was January, 1971? A. Yes.

Q. Do you recall some of your male companions during that period of time? A. No. I can truthfully say

that I do not remember. It was an affair that I have wanted to put out of my mind and I do not know.

Q. You don't know this individual's name? A. No, I don't. I believe at the time that it was a false name.

Q. Well, do you recall the name that he did give you? A. No, I don't.

Q. Do you recall the address of this individual? A. No, I don't.

Q. Where were you living at the time? A. In Meriden at the same address that I'm at at present.

Q. Did you know that he was living in Meriden? A. No, I knew that he was living somewhere in the Wethersfield area or I was told that is where he lived.

Q. And you have no remembrance, no memory at this time of the identity, the name of that person? A. No, I do not.

Q. Can you describe that person? A. Well, I could describe him. He was about forty-six, forty-seven, approximately five feet eleven, light complected, light hair, reddish, sort of auburn hair, and other than that I couldn't say too much about him.

Q. Well, Mrs. C you have described him fairly well considering the length of time that has passed. Is it your testimony now... A. Let me say this, I mean, the type of a person that is an unpleasant person, I might remember this name. I will associate a person I can recall them by sight but never be able to hook a name to that person.

Q. Mrs. C, how frequent, how many times did you see this person, was he a frequent companion? A. I saw him four times.

Q. And you can't remember what he was known by that or the name that he gave you? A. No, I certainly do not. I wish I did but I don't.

Q. You recall the discussion I had with you yesterday in the lawyers' lounge in this building? A. I certainly do.

Q. Didn't you indicate to me that even if you knew the name you wouldn't give the name? A. I didn't say I wouldn't give the name; I said I would consider it a gross intrusion of my privacy to have to give the name.

THE COURT: Mrs. C. let's stop playing games. I'm going to read to you the law under which I am proceeding which compels disclosure of the putative father. I will read it to you and you listen carefully. You just listen.

I will read it so it will be a matter of record. The mother of any child born out of wedlock, or the mother of any child born to any married woman during marriage which child shall be found, if you know, not to be issue of the marriage terminated by a divorce decree or by decree of any court of competent jurisdiction, fails or refuses to disclose the name of the putative father of such child under oath to the welfare commissioner, if such child is a recipient of public assistance, or to a selectman of a town in which such child resides, if such child is a recipient of general assistance, or otherwise to a guardian ad litem of such child, such mother may be cited to appear before any judge of the Circuit Court and compelled to disclose the name of the putative father under oath and to institute an action to establish the paternity of said child. And this is why you are here. Now (b) any woman having been cited to appear before a judge pursuant to subsection (a), fails to disclose or fails to prosecute a paternity action may be found to be in contempt of Circuit Court, fined not more than $200 and imprisoned not more than one year or both. This is an act of the Legislature and we are not here to play games. It has been upheld by the three judge panel—and I am giving you fair warning, Mrs. C that I don't want any games played. Disclose the name. You are under

oath. Now, you have five minutes to do it. I don't want any speeches, just disclose the name.

THE DEFENDANT: I do not know. I am under oath in the court of the State of Connecticut and I can truthfully say I do not know the name of my child's father.

THE COURT: What was the name under which he was known when you went with him?

THE DEFENDANT: That I can truthfully say I do not recall either.

THE COURT: Counsel, was there some information given to you yesterday that this lady said she wouldn't disclose the name?

MR. CARTA: No, your Honor.

THE COURT: Did you tell this to the lawyer yesterday that you wouldn't disclose the name?

THE DEFENDANT: I didn't say I wouldn't. I said if I did know, I would consider it a gross intrusion of my privacy to have to do so.

THE COURT: Well, I'm going to order you. This is no gross intrusion. Legislature has determined it is not and the United States District Court. I do not consider it a gross intrusion, nor the Legislature of the United States. Disclose the name and whether it intrudes on your privacy is something you can come forth yourself on later. If you don't, I will exercise the penalty by law and I am going to send you to jail.

THE DEFENDANT: Your Honor, you are trying to make me say something that I don't know.

THE COURT: You have made ambivalent statement that it is a gross intrusion on your privacy.

THE DEFENDANT: I feel that it is. Even having to be here is a gross intrusion of my privacy.

THE COURT: If you wish to discontinue it, discontinue being a ward of the State of Connecticut and they will have no right to compel you.

THE DEFENDANT: All right. I will do that if that is what the Court wants, then that is finished.

THE COURT: That can happen later. But you are receiving aid at the present time when you were served.

MR. MILLER: May we have this continued for a week possibly? I believe Mrs. C does honestly at this time not remember the name of this person but perhaps in a week she might be able to find out the name of the father.

THE COURT: I will continue it a week, and if you do not disclose. . . .

THE DEFENDANT: Your Honor, if I don't know, how can I. . . .

THE COURT: You do know, Mrs. C. I don't believe you.

MR. CARTA: May that be two weeks to place that on the same day as the other ones?

THE COURT: You be back here two weeks from today with the other matters at two o'clock Mrs. C, and you have arrangements made if you do not disclose at that time, you have arrangements made to take care of your child.

THE DEFENDANT: I have two children, your Honor.

MR. MILLER: Your Honor, am I required to be back on that day as well?

THE COURT: Do you wish this young man to act as your attorney?

MR. MILLER: I should say I am with Legal Aid, one of which Mrs. C does not meet.

THE COURT: Do you wish some form of representation?

THE DEFENDANT: I will get counsel.

THE COURT: You will get your own?

THE DEFENDANT: I will get counsel.

THE COURT: Continued to October 16th, two o'clock.

(Whereupon, the matter was continued to October 16, 1973.)

Letter from Welfare Department to its attorney in the "R.C." case.

State of Connecticut
WELFARE department
139 Charles Street, Meriden, Conn. 06450 - (203) 238-1991

October 12, 1973

Mr. John J. Carta, Jr.
547 Main Street
Middletown, Conn.

Re: R.C.

Dear Sir:

Please be advised that we have closed this case as of 10/15/73. Please close your file on this case. Thank you!

Very truly yours,
Mrs. [Illegible]
Resources

CASE IV

WELFARE	:	TENTH
COMMISSIONER	:	CIRCUIT COURT
	:	
VS.	:	HELD AT
	:	NEW LONDON
	:	
M.B.	:	ON DECEMBER
	:	20, 1972

Before:

HON. GEORGE E. KINMONTH, JR.

Appearances:

ROBERT D. TOBIN, ESQ.
For the Welfare Commissioner
2 Union Plaza
New London, Connecticut

No appearance for
the Defendant

* * * * *

THE COURT: The next matter is M.B. I am going to ask you the same thing. Do you want to get an attorney to represent you?

THE DEFENDANT: No, I don't.

THE COURT: Are you willing to divulge who the father is?

THE DEFENDANT: No, I am not.

THE COURT: You're not going to?

THE DEFENDANT: No.

THE COURT: You're on Welfare now?

THE DEFENDANT: My daughter is until the end of the year. You see, I am in school. I am in college. As soon as I finish this year of college, I won't be on welfare anymore, as soon as I start working.

THE COURT: In this particular matter, the statute says that you're subject to a year in jail or $200.00 fine if you refuse to divulge knowledge who the father of the child is.

THE DEFENDANT: Then I'd rather not have welfare at all.

THE COURT: I know, but there is a long bill back here that the State is interested in getting some of the money back. That is the purpose of this matter.

THE DEFENDANT: My mother and dad said they would pay for the whole thing. So it doesn't matter to me one way or the other.

THE COURT: You mean your mother and father are willing to pay the State what you already received on welfare in the care of this child?

THE DEFENDANT: I suppose so. That is what she told me. She said if it was a money matter, she would take care of it or my father would because I am living at home.

THE COURT: Well, I am telling you as you stand there in front of me that if you refuse to divulge the name of the fa . . .

THE DEFENDANT: I don't know what the name of the father is.

THE COURT: I can give you a year in jail or a $200.00 fine or both.

THE DEFENDANT: I don't know who the father is. I couldn't. . . .

THE COURT: Where do your mother and father live?

THE DEFENDANT: Pawcatuck, Connecticut.

THE COURT: What are their names?

THE DEFENDANT: Mr. and Mrs. J.B., Pawcatuck.

THE COURT: I think until you have some time to investigate this matter, I will continue it.

MR. TOBIN: Yes, your Honor.

THE COURT: And I want you to keep in mind what I just told you. The statute calls for a year in jail

or $200.00 fine if you refuse to divulge knowledge.

THE DEFENDANT: Yes, but what if I don't know then what to do.

THE COURT: Well, that seems a little illogical, if you don't know who you had relations with; who is the father of your child.

THE DEFENDANT: But I don't.

THE COURT: That is rather an intimate thing. You should pretty well know who it was. How much time do you want on this matter.

MR. TOBIN: Two weeks, if your Honor please.

THE COURT: Do you have the figure of how much she is in to the State for?

MR. TOBIN: We do.

MR. KIRKER: They only have the award, the money award, your Honor, not the total.

THE COURT: I think when you investigate, if you talk to her family, you better have the total figure; otherwise, this girl is not liable to be in school; she is liable to be in Montville. All right, we will continue this case for two weeks.

* * * * *

M.B. . . . called as a witness, having been first duly sworn, testified as follows:

COURT CLERK: State your name.

THE WITNESS: M.B.

COURT CLERK: Where do you live?

THE WITNESS: Pawcatuck, Connecticut.

COURT CLERK: You may be seated.

DIRECT EXAMINATION BY
MR. TOBIN:

Q. Miss B. you are the mother of a child born March 20, 1972? A. Yes.

Q. Your child is receiving public assistance? A. Yes, she is.

Q. Would you tell the name and address of the father of this child? A. I don't know the address, but his name is J.T.

Q. J.T. A. Yes, he was living somewhere in Westerly, Rhode Island, but I am not sure where he is living now and I don't think he is working either.

Q. Was he attending school? A. No.

Q. Do his parents live in Westerly. A. I don't know where his parents live.

Q. Is he from Rhode Island? A. Bradford or some place around there, I am not positive.

Q. When was the last time that you have seen him? A. In August this past summer.

THE COURT: August of this year? A. Yes.

THE COURT: Where was he living then? A. He had a cottage at the beach somewhere, but I haven't associated with him at all.

THE COURT: Well, the child was born in March and you have seen him in August? A. Just to say hello to; no personal relationship at all. Nothing like that.

THE COURT: Where did you say his parents live? A. Somewhere past Bradford, Rhode Island. I don't know where. I don't even know his parents.

MR. TOBIN: Nothing further, your Honor.

THE COURT: All right, you're excused.

* * * * *

CASE V

WELFARE	:	TENTH
COMMISSIONER	:	CIRCUIT COURT
	:	
VS.	:	HELD AT
	:	NEW LONDON
	:	
A.M.M.	:	ON DECEMBER
	:	20, 1972

Before:

HON. GEORGE E. KINMONTH, JR.

Appearances:

ROBERT D. TOBIN, ESQ.
For the Welfare Commissioner
2 Union Plaza
New London, Connecticut

No appearance for
the Defendant

* * * * *

THE COURT: You have heard what I have said. Are you willing to divulge knowledge who the father of your child is?

THE DEFENDANT: The father lives in England.

THE COURT: At least you can divulge knowledge who it is. That's all we are after.

THE DEFENDANT: Right now I prefer not to. I think I want to see an attorney about this.

THE COURT: All right. How much time do you want?

THE DEFENDANT: Two weeks–a week; I don't know.

THE COURT: All right, put this down for January 3rd. Now you heard me say that if you are

unwilling to cooperate, why I can give you a year in jail or $200.00 fine. Being on State aid, you most likely will get a jail sentence, if you don't want to cooperate. You better come back on January 3rd willing to do something.

THE DEFENDANT: Okay.

THE COURT: Continued to January 3rd.

* * * * *

A.M.M., called as a witness, having been first duly sworn, testified as follows:

COURT CLERK: State your name.

THE WITNESS: A.M.M.

COURT CLERK: Where do you live?

THE WITNESS: . . . , Groton.

COURT CLERK: Thank you. You may be seated.

DIRECT EXAMINATION BY
MR. TOBIN:

Q. Are you the mother of a child born September 27, 1972? A. Yes.

Q. The child is receiving public assistance? A. Yes.

Q. Will you disclose to the Court the name and address of the father of the child? A. R.M.R. He went back to England today.

THE COURT: His name is R? A. R.

THE COURT: He went back to England today? A. Yes.

THE COURT: Was he is the Navy? A. No, he works for the English Government.

THE COURT: Where was he living before he left? A. Well, up until the beginning of September he lived in . . . Niantic and he went back to England for a month. . . .

THE COURT: 7 what? A. . . . in Niantic and he went back to England for a month and came back here

in October on temporary duty until today to finish up the project he was working on for three years.

THE COURT: Who did he work with? A. . . . in New London. I can tell you where he works in England.

THE COURT: . . . A. He was an exchange scientist.

THE COURT: And he just left? A. Well, his plane leaves at 7:00 tonight.

THE COURT: His plane leaves at 7:00 tonight? A. Well, he's left. He is in New York right now.

THE COURT: What plane is he taking? A. I don't know. All I know is his flight is 7:00 tonight. I didn't ask him.

THE COURT: I don't know whether Welfare wants to go down to New York and board the plane or to go to England.

Q. I didn't get the last name on that.

Q. R. R. A. Like R. R.

THE COURT: And he last worked at the . . . .? A. I can tell you where he works in England; . . ., Dorset, England.

Q. Does he have any plans to return? A. Nothing definite; like he has no job here or anything.

MR. TOBIN: That is all I have, your Honor. . . . Has he ever given you any money toward the support of the child? A. I didn't want him to have any claim on the baby.

THE COURT: He knows it's his baby though? A. Yes, he has seen the baby.

THE COURT: He has seen the baby and knows it's his.

MR. TOBIN: Nothing further, your Honor.

THE COURT: All right, you may step down. You're excused.

* * * * *

CASE VI

WELFARE	:	TENTH
COMMISSIONER	:	CIRCUIT COURT
VS.	:	HELD AT
	:	NEW LONDON
	:	
A. Ar.	:	ON FEBRUARY
	:	1, 1973

Before:

Appearances:

Robert D. Tobin, Esq.
For the Welfare Commissioner
2 Union Plaza
New London, Connecticut

No apperance for the
Defendant

* * * * *

A. Ar. taking the witness stand, having been first duly sworn, testified as follows:

COURT CLERK: State your name.

THE WITNESS: A. Ar.

COURT CLERK: Where do you live?

THE WITNESS: . . . Groton.

COURT CLERK: Thank you. You may be seated.

DIRECT EXAMINATION
BY MR. SMITH:

Q. Miss Ar., you are the mother of a child born October 31, 1972? A. Yes.

Q. And your child was a recipient of public assistance at some time? A. Yes.

Q. Would you name the father of the child. A. No.

THE COURT: Will you name the father? A. No, I don't want to.

THE COURT: Well, under the statute you can serve a year in jail or be fined $200.00 if you refuse to, under oath. A. I don't want the father named.

THE COURT: You don't want the father named. Well, maybe if I give you a year in jail, you will think it over. That is what the statute says. If you refuse to divulge knowledge, you can spend a year in jail. A. I don't want the father named.

THE COURT: You'd better sit down for a minute and think it over because I am liable to send you to jail for a year, if you don't want to. Step down for a moment.

* * * * *

THE COURT: Miss Ar., are you still going to refuse to name the father? A. Yes.

THE COURT: All right, I have told you what you're subject to. A. I realize it.

THE COURT: Do you think it would be much better for you to take a year in jail? A. Not really, but I'd rather not give the father's name.

THE COURT: Well, I don't make the law. The Legislature makes the law. That is what they say, that you divulge knowledge under oath or else you spend a year in jail. It isn't the thing I want to do anymore than you want to do it. After all, somebody is the father of the child. It's his responsibility to support the child rather than the State support the child. A. The State is not supporting him. I am not on the State any longer.

THE COURT: But the State did support the child at some time. The State is entitled to be reimbursed for

the money they expended for the support of the child. A. I can reimburse them.

THE COURT: Well, you reimburse them. That is all the State is interested in, the reimbursement. How much money is owed the State on the Ar. matter?

MAN FROM WELFARE DEPARTMENT: We can't tell you at this time, your Honor. We weren't prepared. There was no mention of reimbursement.

MR. TOBIN: May it be continued a week?

THE COURT: I will continued it one week to see what can be worked out on this matter. If nothing can be worked out, you're going to have to go to jail. Continue it one week to February 8th.

MR. TOBIN: Thank you, your Honor.

* * * * *

CASE VII

WELFARE	:	CIRCUIT COURT
COMMISSIONER	:	SEVENTEENTH CIRCUIT
	:	AT BRISTOL
VS.	:	
	:	
E.B.	:	DECEMBER 21, 1972

Before:

The Honorable J. Robert Lacey, J.

Appearances:

For the Plaintiff; Richard Alden, Esq.
238 Main Street
Bristol, Connecticut

* * * * *

E.B. of Terryville, Connecticut, having first been duly sworn, testified as follows:

DIRECT EXAMINATION
BY MR. ALDEN:

THE COURT: How old are you?
THE WITNESS: Twenty (20).
THE COURT: Twenty? Go ahead Mr. Alden.
Q. Is it Miss or Mrs.? A. Miss.
Q. And Miss B, are you the mother of a child born around April 25, 1971? A. Yes.
Q. Is that a boy or girl? A. Boy.
Q. And is that child the recipient of welfare, public assistance? A. Yes.
Q. How long has that child been a recipient of welfare? A. Since he was born, the day he was born.
Q. And has the Welfare Department asked you to name the father of that child? A. Yes.
Q. Have you named the father of that child? A. No.
Q. Can you tell us why you haven't named him? A. Yes. Because I don't know who he is.
THE COURT: You do not know who the father of this child is?
THE WITNESS: No.
THE COURT: Is that because you had had relations on or about the time of conception of this child with others besides the individual who is the true father? Do you know what I'm taking about?
THE WITNESS: No.
THE COURT: No? Why don't you know who the father of this child is?
THE WITNESS: I was having trouble with my parents. . . . (Child crying in the courtroom).
THE COURT: Will you kindly remove the child from the courtroom, please? You may go into another

room. Miss B you were having trouble with your parents?
THE WITNESS: Yes.
THE COURT: And what has that to do with the paternity of this child?
THE WITNESS: Well, I went out that night.
THE COURT: What?
THE WITNESS: I went out that day—that night and I was walking in front of the bowling alleys in Winsted and this guy picked me up, and we were drinking.
THE COURT: A guy picked you up. You had never seen him before?
THE WITNESS: No.
THE COURT: In an automobile?
THE WITNESS: Yes.
THE COURT: And you went with him and went drinking.
THE WITNESS: Yes.
THE COURT: You mean drinking liquor?
THE WITNESS: Yes.
THE COURT: And you had relations with him, physical relations?
THE WITNESS: Yes.
THE COURT: You never saw him again? Is that it?
THE WITNESS: Yes.
THE COURT: Did he make any disclosure as to who he was or where he came from?
THE WITNESS: No. I never saw him again.
THE COURT: Never saw him again. But at the time you did see him and while you were with him, did he tell you where he came from, whether he lived in Winsted or anything about where he lived or worked or what his name is—identity?
THE WITNESS: No.
THE COURT: No, he didn't. Go ahead.

BY MR. ALDEN:

Q. This was the man—this was the only man? A. Yes.

Q. I see.

MR. ALDEN: I don't think there is anything else I can ask.

THE COURT: What day did you discover you were pregnant with child?

THE WITNESS: September, late September.

THE COURT: And did you, after that occasion when you were with this individual in Winsted, did you have physical relations with anyone else?

THE WITNESS: No.

THE COURT: So you are reasonably sure then that the father of this child is the unknown male that you had relations with in Winsted?

THE WITNESS: Yes.

MR. ALDEN: I have nothing further.

THE COURT: Step down.

Is this party excused, Mr. Alden?

MR. ALDEN: Yes, your Honor.

THE COURT: You may go.

THE WITNESS: Thank you.

CASE VIII

WELFARE	:	CIRCUIT COURT
COMMISSIONER	:	SEVENTEENTH CIRCUIT
	:	AT BRISTOL
VS.	:	
	:	DECEMBER 21, 1972
T. J.		

Before:

The Honorable J. Robert Lacey, J.

Appearances:

For the Plaintiff; Richard Alden, Esq.
238 Main Street
Bristol, Connecticut

* * * * *

T.J. of , Bristol, Connecticut, having first been duly sworn, testified as follows:

DIRECTION EXAMINATION

BY MR. ALDEN:

Q. How old are you?

THE WITNESS: Twenty-two (22).

THE COURT: Twenty-two?

THE WITNESS: Yes.

THE COURT: And where do you live?

THE WITNESS: . . . .

THE COURT: You may proceed.

Q. T., is that Miss or Mrs.? A. Miss.

Q. And are you the mother of a child born in New Britain on or about September 14, 1970? A. Yes.

Q. And is that child the subject—recipient of public assistance in the State of Connecticut? A. Yes.

Q. Since she was born? Is it he or she? A. She.

Q. Since she was born? A. Yes.

Q. And have you refused to disclose the name of the father of that child? A. One time I have.

Q. They asked you once and at that time you refused? A. Since I had been in Bristol. In New Britain they told me I didn't have to say anything.

Q. Is this the Welfare Department in New Britain? A. Mmm Hmm.

THE COURT: Did you make a statement, in writing, under oath, to anyone from the Welfare Department as to who the father of the child is?

THE WITNESS: No.

THE COURT: Were you asked to?

THE WITNESS: Yes.

THE COURT: You were asked to. Did you refuse to?

THE WITNESS: Yes.

THE COURT: Why did you refuse?

THE WITNESS: Because at the time I didn't want to say anything.

THE COURT: What?

THE WITNESS: I didn't want to say anything at that time.

THE COURT: Are you prepared now to disclose, under oath?

THE WITNESS: Well, I would like to have this continued until I get a lawyer.

THE COURT: For what purpose?

THE WITNESS: Why? I have reasons.

THE COURT: You have reasons! Well, let me tell you that under the law you, by disclosing who the father is, do not subject yourself to any criminal penalty. And I am telling you that for your own protection.

THE WITNESS: Yes, sir.

THE COURT: You cannot be prosecuted for any act of illicit intercourse by reason of the fact that you

disclose here, on the witness stand, the parentage of this child. Do you understand that?

THE WITNESS: No. I don't understand what you said.

THE COURT: I will explain it as carefully as I can.

You have been called here to be examined under oath as to who the father of this child of yours is.

THE WITNESS: Yes.

THE COURT: And I ask you, are you now prepared to disclose the father of the child?

THE WITNESS: Well, not at this time, not until I. . . .

THE COURT: What?

THE WITNESS: Not at this time.

THE COURT: Not now?

THE WITNESS: No, because I would like to get a lawyer first.

THE COURT: Well, what is a lawyer going to do for you?

THE WITNESS: Because there is like a few things I have to discuss besides that. This concerns telling the father of the baby.

THE COURT: Well, this child is the subject of public assistance. The State is paying for it, for the support of this child and under the law if you neglect to bring an action to get support from the father of this child, as the law requires, then the state, the town or whatever agency is furnishing support may bring an action in its own name against the alleged father.

But unless and until there is some disclosure by you as to the identity of that person, the State who is paying out the money or the municipality is powerless to act. You are being examined under oath and you are bound to disclose. You do not incur any criminal penalties by any disclosure. You have immunity under the statute. So I direct you to answer now, under oath, as to the paternity of this child. Go ahead.

THE WITNESS: L. B.

THE COURT: Where does he live?

THE WITNESS: In New Britain. I don't know whereabout.

THE COURT: In New Britain. How long had you known him prior to the time you had physical relations?

THE WITNESS: I've known him since I have been up here, about three years.

THE COURT: Is he a negro or caucasian?

THE WITNESS: Negro

THE COURT: Was he employed any where at the time that you were socializing with him?

THE WITNESS: No.

THE COURT: He was unemployed?

THE WITNESS: Yes. He was unemployed.

THE COURT: What? He was working?

THE WITNESS: He wasn't.

THE COURT: He wasn't working. Was he going to school?

THE WITNESS: No, he wasn't. Wasn't doing anything.

THE COURT: Wasn't doing anything. Did you previously live with your parents?

THE WITNESS: I live by myself.

THE COURT: You live by yourself. Where?

THE WITNESS: . . . .

MR. ALDEN: I have nothing further.

THE COURT: Nothing further. You may step down.

Is this matter, T.J. . . . excused?

MR. ALDEN: Yes, she is, your Honor.

THE COURT: You are free to go ma'am.

CASE IX

WELFARE	:	CIRCUIT COURT
COMMISSIONER	:	SEVENTEENTH CIRCUIT
	:	AT BRISTOL
VS.	:	
	:	
D. P.	:	DECEMBER 21, 1972

Before:

The Honorable J. Robert Lacey, J.

Appearances:
For the Plaintiff;

Richard Alden, Esq.
238 Main Street
Bristol, Connecticut

* * * * *

D.P., Bristol, Connecticut, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ALDEN:

THE COURT: How old are you ma'am?

THE WITNESS: Twenty (20).

THE COURT: Twenty. You may proceed Mr. Alden.

Q. Is it Miss or Mrs.? A. Mrs.

Q. And are you the mother of a child born out of wedlock around May 2, 1971? A. Yes.

Q. Is that a boy or girl? A. Girl.

Q. And is that child a recipient of public assistance from the Welfare Department? A. Yes.

Q. And how long has she been such? A. For about sixteen (16) months.

Q. And you are now married? A. Yes.

Q. And have you been asked by the Welfare Department to disclose the name of the father of your child? A. Yes.

Q. And have you refused to disclose it? A. I told them I didn't know.

THE COURT: You didn't know the identity of the father?

THE WITNESS: No, I don't know who the father is.

THE COURT: Why?

THE WITNESS: Because I was going out with more than one guy at the time.

THE COURT: You were what?

THE WITNESS: I was going out with more than one guy at the time.

THE COURT: You were going out with more than one guy at the time. Well that indicates then that perhaps you were having relations with a number of persons.

THE WITNESS: Yes.

THE COURT: Well, the name to attach to that is that you were promiscuous. Do you know what that means?

THE WITNESS: No.

THE COURT: Where and when did you have relations that resulted in your pregnancy?

THE WITNESS: Where? What do you mean "Where"?

THE COURT: Where and when did you have relations with some male that resulted in your pregnancy?

THE WITNESS: It had to be in the month of June.

THE COURT: Had to be in June. Well, don't you have any recollection of who you were with?

THE WITNESS: I was going out with more than one.

THE COURT: You were going out with more than one.

Were you asked by any representative of the welfare agency to disclose the identity of the person with whom you had relations that resulted in your pregnancy?

THE WITNESS: Yes.

THE COURT: And you couldn't name him.

THE WITNESS: No, I can't.

BY MR. ALDEN:

Q. D, wouldn't that be around September of 1970? The child was born in May of 1971. A. Yes. It was June or July. It was around there. I found out in September I was pregnant.

Q. When you said "more than one," do you mean two or. . . . A. No. I was going out with several guys.

Q. By "several" how many do you mean, approximately? A. About four or five.

Q. You were going out with them around the summer of 1970, September of 1970? A. Yes, around there.

Q. And you had relations with all five, the four or five? A. Mmm Hmm.

Q. Are they all from Bristol? A. No. New Britain.

Q. All from New Britain? Do you know any of their whereabouts? A. No, I don't. I haven't heard from any of them.

Q. And you live here in Bristol now? A. Yes.

MR. ALDEN: I have nothing further, your Honor.

THE COURT: Well, when you became pregnant with child. . . .

THE WITNESS: Mmm Hmm.

THE COURT: . . . didn't it occur to you that somebody was responsible for that condition?

THE WITNESS: Oh, yes.

THE COURT: And you were concerned, weren't you?

THE WITNESS: Yes.

THE COURT: Were you?

THE WITNESS: Mmm Hmm.

THE COURT: And did you look for that individual?

THE WITNESS: No.

THE COURT: You didn't know who it was?

THE WITNESS: No. You can't look for somebody that I don't know who it is.

THE COURT: And you want the Court to understand that these "several guys" as you called them, you had relations with and you don't know who they are?

THE WITNESS: No.

THE COURT: She was promiscuous to say the least.

Step down.

Is D.P. excused?

MR. ALDEN: Yes, your Honor.

THE COURT: What is her name now that she's married?

MR. ALDEN: That is her name, her married name.

THE COURT: You are excused.

CASE X

CV 2-738-94960

NICHOLAS NORTON,	:	CIRCUIT COURT,
WELFARE COMM.	:	SECOND CIRCUIT
STATE OF CONNECTICUT	:	
	:	
V.	:	AT BRIDGEPORT
	:	
MARIE LARRACUENTO	:	NOVEMBER 23, 1973

MEMORANDUM OF DECISION

The within action has been brought by the Welfare Commissioner of the State of Connecticut to compel the defendant to disclose the name of the putative father of one Todd Alexander Larracuento who was born to the defendant, Marie Larracuento, of Bridgeport, Connecticut on July 29, 1972. The action was drawn in the form of a petition pursuant to the provisions of Section 52-440b (a) of the Connecticut General Statutes.

The court finds the following facts:

Said Todd Alexander Larracuento was born to the defendant on July 29, 1972 at the Park City Hospital in Bridgeport, Connecticut. On May 8, 1973 the defendant made application to the State Welfare Department seeking Aid For Dependent Children benefits, which application was duly approved on May 9, 1973. She and her child have been the recipients of state welfare benefits from said date to the date of this hearing. At the time the application was filed the defendant did not disclose the name of the putative father although the application does set forth a request for such a disclosure. Nor was any reason given for her refusal to so disclose.

On or about August 14, 1973, Kenneth Griswold, a welfare department investigator, conducted a further interview with the defendant who still refused to name the father of her child. According to the testimony of Mr. Griswold, no reason was given by her in explanation of her refusal to divulge the putative father's name. The father's name is still unknown to the State Welfare Department.

At the time of trial the benefits received by the defendant and her child amounted to $84.49 per month. The customary benefit which would normally be received by the defendant and her child would have amounted to $204.49 per month. However, at the time the application was filed by the defendant, she did disclose that she was receiving support income in the amount of $120.00 per month. This latter amount was, therefore, deducted from what the normal benefit would have been ($204.49), leaving a net figure of $84.49 per month, which sum has been paid by the Welfare Department since May 9, 1973. According to the testimony of Mr. Griswold, the Welfare Department considers the amount of any benefit so paid (whether it be $204.49 or $84.49) to be an amount which is attributable one-half (½) to the mother and one-half (½) to the child. However, if the mother were self-supporting, or had independent financial means, and the child alone was in need of assistance the State Welfare Department would normally provide the sum of $80.56 per month under the A.F.D.C. program for said child's support.

It was Miss Larracuento's testimony, which the court finds credible, that the reason she did not disclose the name of the putative father to the Welfare Department was because he has been voluntarily providing support for said child in the amount of $120.00 per month; that he has faithfully paid this amount to her on a semi-monthly basis ($60.00) since

the child was born; that she disclosed the monthly payment of $120.00 to the Welfare Department when she first sought assistance under the A.F.D.C. program; that the putative father is married and has a wife and five (5) children who are unaware of the situation and she does not wish to expose either his wife or the children to the knowledge of such an unfortunate event; that he, the putative father, has acknowledged in writing that he is the father of the child (which written acknowledgement counsel for the defendant represented to the court has been turned over to him by the defendant for safekeeping with authority to turn the same over to the State Welfare Department should the putative father leave the jurisdiction at any time in the future and fail to carry out his support obligation); and that for all of the aforesaid reasons she would be reluctant to disclose his name at the present time.

The issue before the court is whether it should order the defendant to disclose the name of the putative father in order that an action to establish paternity of said child may be instituted.

The within action was brought pursuant to Section 52-440b (a) of the Connecticut General Statutes, Revision of 1958, as amended. The statute, together with sub-section (b) setting forth the penalty provision for anyone refusing to disclose such information, provides as follows:

> Sec. 53-440b. [*sic*] Compelling disclosure of name of putative father and institution of action. (a) if the mother of any child born out of wedlock, or the mother of any child born to any married woman during marriage which child shall be found not be issue of the marriage terminated by a divorce decreee of any court of competent jurisdiction, fails or refuses to disclose the name of the putative father of such child under oath to the welfare commissioner if such child is a recipient of public assistance, or to a selectman of a town in which

such child resides, if such child is a recipient of general assistance, or otherwise to a guardian or a guardian ad litem of such child, such mother may be cited to appear before any judge of the circuit court and compelled to disclose the name of the putative father under oath and to institute an action to establish the paternity of said child.

(b) Any woman who, having been cited to appear before a judge of the circuit court pursuant to subsection (a), fails to appears or fails to disclose or fails to prosecute a paternity action may be found to be in contempt of said court and may be fined not more than two hundred dollars or imprisoned not more than one year or both.

The issue of the constitutionality of the above cited statute was recently decided by a three judge court in the case of *Donna Doe et als v. Nicholas Norton, individually, and as Welfare Commissioner of the State of Connecticut,* Memorandum of Decision, dated and filed September 5, 1973, U.S. District Court, Hartford, Connecticut, Civil No. 15579. Blumenfeld, District Judge, and No. 15589 (companion case). In a well reasoned and detailed opinion the court found that the statute in question was not in irreconcilable conflict with the provisions, basic purposes and objectives of the A.F.D.C. Act (Social Security Act) (under which the State Welfare Department receives financial assistance from the Federal Government together with matching funds from the State of Connecticut) so as to be invalid under the supremacy clause; that the *unwed* mother's right to privacy (as distinguished from marital privacy) is not unduly impinged upon, nor, in view of the immunity grant extended to the unwed mother as well as the putative father (Sec. 52-435 (b) and (e) of C.G.S.), is the Fifth Amendment privilege against self incrimination violated; that what might appear to be a discriminatory classification based upon illegitimacy of children, when viewed in light of the fact that the

statute operates to the advantage rather than to the disadvantage of such children, is not an invidious discrimination in violation of the equal protection clause of the Fourteenth Amendment; nor is the classification of "unwed mothers of children receiving public assistance" a discriminatory one when the statute itself provides that disclosure of the putative's father's name may be ordered to be given not only to the welfare department, in the case of children receiving public assistance, but also to the guardian or guardian ad litem of any such children.– in other words the classification bears a rational relationship to a legitimate state purpose, i.e. to enforce the obligation of the father to support the child whether the child is a recipient of public assistance or in the custody of a guardian who may be assuming said child's support. A reading of the above cited case leaves no doubt that the constitutionality of the statute has been thoroughly examined and affirmed.

A preliminary question which presents itself to the court before any determination of whether the mother should be compelled to disclose the name of the putative father is whether the court is vested under the statute with any discretion in the matter or whether an order compelling disclosure must be ordered regardless of the circumstances. The pertinent portion of Sec. 52-440b (a) reads as follows:

> "... such mother *may* be cited to appear before any judge of the circuit court and compelled to disclose the name of the putative father under oath. ..." (Emphases supplied)

There is no question but what from the language used there is a discretion vested in the issuing judge as to whether a citation should or should not issue in the first instance. As to whether the meaning of the term "may be" was also intended by the legislature to carry over to the word "compelled" is not entirely clear.

However, the court is of the opinion that it was so intended. In fact a reading of sub-section (b) of the same statute discloses that the legislature did in fact use the term "*may be* found in contempt" when discussing the punishment to be meted out to a mother who "fails to appear or fails to disclose" (the name of the putative father) (emphasis supplied). A reading of the majority opinion of *Donna Doe et als v. Nicholas Norton, individually and as Welfare Commissioner of the State of Connecticut*, supra, also makes it clear that the U.S. District Court was of the opinion, namely, that the legislature vested discretion in the trial court as to whether or not sanctions should be imposed in the face of a refusal on the part of an unwed mother to disclose the putative father's name:

> "... this does not mean that the sanctions permitted by the statute are likely to be woodenly imposed without regard for impact upon the family.
> We are unwilling to assume such an unthinking automatic exercise of judicial power by the state judiciary. In the event of a mother's failure to disclose the father's name, the statute provides that she "may" be found in contempt and "may" be fined or imprisoned. This authorizes the exercise of sound judicial discretion to determine whether in a particular case non-disclosure warrants a finding of contempt or the imposition of penalties. In this regard, the statute is in marked contrast to other Connecticut disclosure statutes, which provide that in the event a person obligated to furnish information refuses to do so, a state judge "shall commit such person to jail until he testifies..." *E.g.*, Conn. Gen. Stats. 17-2a (witnesses at welfare department hearings); Conn. Gen. Stats. 12-2 (witnesses at tax department hearings); Conn. Gen. Stats. 30-8 (witnesses at liquor control commission hearings). We need not anticipate at this point the variety of situations that will confront the state circuit court judges before whom contempt citations will be sought. It is sufficient in this litigation, which attacks the statute on its face, to note that the statute, in its application, does not preclude and, indeed, appears to specify the exercise of sound judicial discretion." (Footnote 14, Page 16a)

This court is, likewise, of the opinion that it does have discretionary power to determine whether, under all of the circumstances presented, an order ought to be issued to the defendant to make the disclosure which is sought by the plaintiff, or otherwise be exposed to such punishment as is set forth in the statute.

The real question at issue then becomes one of whether, under all of the facts and circumstances as proven, the court should find under its discretionary power that the mother should be compelled to name the putative father.

A weighing of all of the testimony elicited from the witnesses called by the State has not convinced the court by a fair preponderance of the evidence that the plaintiff is, in fact, paying any substantial financial assistance for the support of the defendant's child. The amount of the putative father's monthly payment, as voluntarily made by him to satisfy his legal obligation to support said child ($120.00 per month), has been faithfully paid to the mother since the child was born. In computing the amount of financial aid which the mother and child would normally be entitled to receive under the State's A.F.D.C. program ($204.49 per month), the State did deduct the support payment of $120.00 per month made by the putative father, leaving a net benefit payment by the State of $84.49 per month. Although it was the testimony of the State Welfare Department investigator that the State considers one-half of this net amount to be for the child and

one-half for the unwed mother, i.e. $42.25 to each, the percentage division is obviously an arbitrary allocation when viewed in the light of the same witnesses' testimony that if the mother were financially independent and had no need for public assistance, the maximum amount which would be paid for support of the child on a monthly basis would normally be $80.56 per month. When the child is already receiving support money in the sum of $120.00 per month as paid by the putative father, it is difficult to understand the conclusion of the Welfare Department that any of the $84.49 per month can be said to be allocable to support of the child. Certainly the payment which the putative father makes can only be for the sole benefit of the child. The putative father clearly has no obligation to support the child's mother, nor is the mother, under the reasoning of *Bourque v. Commissioner of Welfare*, 6 Conn. Cir. Ct. 685, 308 A.2d 543 (1972), entitled to appropriate any of said sum for the benefit of herself or any other children she might have. The court is not persuaded from the testimony of the State Welfare investigator that the so-called 50-50 allocation of the net benefit of $84.49 is anything more than an arbitrary division without any basis in fact. In other words, and borrowing at the same time from the concept of Judge Newman as set forth in a separate concurring opinion, the State's interest should be of such a substantial nature as to outweigh the mother's constitutionally protected right to privacy in sexual and child rearing matters. In fact, Judge Newman suggests that a disproportionate imbalance between the interest which the State seeks to protect and the mother's interest in the right to privacy may well pose a constitutional question. Without deciding whether such an issue was in fact presented to this court, or whether the application of the statute in this instance makes it so clearly unconstitutional that it ought to be ruled

upon adversely to the State at this level, the court does take the position that the State's financial interest accruing from the monthly benefits paid in behalf of the child is so insignificant, if it exists at all, that under the circumstances the court ought not require the defendant to disclose the name of the putative father. The primary purpose of the statute is to protect the State's coffers. The court is not convinced that the State's financial resources have been invaded to any substantial degree, if at all, insofar as support payments for the defendant's child are concerned.

Counsel for the State has urged the court to compel such a disclosure for the following reasons:

(1) The primary purpose of the statute is to enforce the obligation of the father to support his own child and, thereby, secure to the child the long term interest of knowing the identity of his father so that his future support needs may be met.

(2) If the putative father dies, the child would be without remedy unless such an adjudication of paternity is had.

(3) Should the putative father leave the jurisdiction, the child might be forever prejudiced by such lack of adjudication.

(4) The running of the Statute of Limitations could prejudice the child's future financial position.

In so far as the possible demise of the putative father in the future might work a hardship upon the child where no adjudication of paternity has been had, it is not always possible to provide for the contingency of death in any event. Assuming an adjudication of paternity were to be obtained in advance of his demise, if the father should die without assets a recorded court order of support would be meaningless. In fact, the putative father's present support payment, admittedly a generous one, if used wisely and frugally by the

defendant, could turn out to have a total worth of much greater proportions than might well be accomplished by virtue of a court order.

In the meantime, if the father of the defendant's child refuses to pay said amount in the future, or reduces said sum to an amount where it is obvious that the State is being compelled to contribute a substantial amount for the child's support, the change in circumstances might well warrant the granting of a petition similar to the one before the court. Obviously, so long as support payments are being made the State [*sic*] of Limitations will not be tolled, not, if the father removes himself to another jurisdiction will the Statute run to the prejudice of the State.

The court is of the opinion that, under all of the facts and circumstances appertaining at this time, the ends of justice will best be served by not compelling the defendant to make the disclosure requested in the instant petition.

Accordingly, the requested order of disclosure is denied and the petition is dismissed.

/s/ Henebry
Henebry, J.